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SUPREME COURT OF THE UNITED STATES.

No. ~~206.~~ 120.

NATHAN BRADLEY, CLAIMANT OF THE PROCEEDS OF SALE OF THE SCHOONER HARRIET ROSS, HER TACKLE, APPAREL, &c., APPELLANT,

vs.

THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INSURANCE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

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1 Pleas in the circuit court of the United States of America within and for the northern district of Illinois, held in the city of Chicago, in the district aforesaid, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, presiding judge, and the Hon. Thomas Drummond, district judge of said district, and associate judge of said circuit court, on Friday, the twenty-ninth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-ninth year.

WM. H. BRADLEY, *Clk.*

THE CORN EXCHANGE FIRE AND INLAND NAVIGATION Insurance Company
vs.
THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET Ross.

2 NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on this day, to wit, the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and sixty-four, came Nathan B. Bradley, claimant of said proceeds of the sale of the schooner Harriet Ross, respondent, by Messrs. Bates & Towslee, his proctors, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his transcript of a record from the district court of the United States for the northern district of Illinois, in admiralty; which said transcript is in the words and figures following, to wit:

3 Pleas in the district court of the United States of America for the northern district of Illinois, before the Hon. Thomas Drummond, judge of said court, and on Monday, the sixth day of June, in the May term of said court, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth year.

WM. H. BRADLEY, *Clerk.*

THE CORN EXCHANGE FIRE AND INLAND NAVIGATION Insurance Company
vs.
THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET Ross.

Be it remembered, that on the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and sixty-three, said libelant, by its proctor, Robert Rae, esq., came into the clerk's office of the district
4 court of the United States for the northern district of Illinois, and filed its libel against said respondent, and also its stipulation for costs in said entitled cause; which said stipulation for costs and libel are in the words and figures following, to wit:

Stipulation for costs.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

District court, term, A. D. 18 .

Whereas a libel was filed in this court on the 23 day of Feb., A. D. 1863, by the Corn Exchange Fire and Inland Navigation Company, of the city of New York, against the proceeds of the Harriet Ross, boats, tackle, apparel,

and furniture, for the reasons and causes in the said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libelant, and the said libelant and O. B. Sansum and Rob. Rae, surety, the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the libelant or his surety, execution may issue against their goods, chattels, and lands, for the sum of two hundred and fifty dollars: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of two hundred and fifty dollars, conditioned that the libelant above named shall pay all such costs as shall be awarded against them by this court, or in case of appeal, by the appellate court.

The Corn Exchange Fire and Inland Navigation Ins. Co., by their attorney.

O. B. SANSUM.

R. RAE.

Taken and acknowledged this day of , A. D. 18 , before me.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

R. Rae, party to the above stipulation, being duly sworn, deposes and says that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

R. RAE.

Sworn this third day of February, A. D. 1863, before me.

SAM. T. ATWATER,

Notary Public, city of Chicago.

Endorsed: Filed Feb. 24, A. D. 1863.

WM. H. BRADLEY, *Clerk.*

Libel.

To the Honorable Thomas Drummond, judge of the United States district court, northern district of Illinois, in admiralty:

The libel and complaint of the Corn Exchange Fire and Inland Navigation Insurance Company, a corporation existing by the virtue of the laws of the State of New York, against the proceeds, now in the registry of this honorable court, arising from the sale of the schooner Harriet Ross, her boats, tackle, apparel, and furniture, in a cause of collision, civil and maritime, alleges as follows:

First. That at the time the cause of action hereinafter mentioned arose the sch'r Harriet Ross was a vessel of over twenty-four tons burthen, and engaged in commerce and trade on the lakes and the navigable waters connecting the same, and duly enrolled and licensed according to the act of Congress in such cases made and provided.

Second. That the sch'r Flora Watson, whereof libelant was the underwriter—and has since the cause of action hereinafter mentioned arose paid the loss—on the morning of the 3rd of November, A. D. 1862, was navigating Lake Erie with a cargo of fourteen thousand three hundred and forty bushels of wheat, with a good and sufficient lookout, properly stationed and engaged in the business of lookout, with a good and bright light properly placed forward so as to be seen by passing vessels, with a good and competent crew in charge of her, the wind being southwest and a good sailing breeze, the schooner steering east-northeast, about three miles off of Niagara light, and about twelve miles from Canada, was run foul of by the schooner Harriet Ross, striking said sch'r Flora Watson on the starboard side, and so breaking her that within fifteen minutes said

schooner sunk, together with her said cargo; whereby libelant was damage to the amount of five thousand and seven dollars, together with interest, from said loss.

Third. That said schooner Harriet Ross was unskillfully managed and navigated, and that she had no proper lookout, wheelsman, or light, and that the collision was caused solely by the want of care and skill on the part of the crew of Harriet Ross, and not from any want of care of those having charge of the schooner Flora Watson.

Fourth. That said libelant has demanded the said damages of the agent of said schooner Harriet Ross, but that the said respondent denies all liability for and on account of said damage; that all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libelant prays that so much of said proceeds aforesaid now in the registry of this honorable court, as will satisfy said damage, interest, and costs in the premises aforesaid be paid to libelant, and grant such other and further relief as law and justice may require.

The Corn Exchange Fire and Inland Navigation Insurance Co., by their attorney—

O. B. SANSUM.

Sworn and subscribed before me this 23d day of Feb., A. D. 1863.

R. RAE, *U. S. Com'r.*

U. S. A., *N. Dist. of Ill's, ss:*

O. B. Sansum, being first duly sworn, deposes and says that he is the agent of the libelant in the above case.

O. B. SANSUM.

Sworn and subscribed before me this 2 day of Feb., A. D. 1863.

R. RAE, *U. S. Com'r.*

Endorsed: Filed Feb. 24th, 1863.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the twenty-sixth day of February, A. D. 1863, came Nathan B. Bradley, claimant, into the clerk's office of said court, and filed his answer and claim and also his stipulation for costs in said entitled cause; which said stipulation and also said answer and claim are in the words and figures following, to wit:

Stipulation.

District court of the United States for the northern district of Illinois.

Whereas a libel was filed in this court on the 24th Feb'y, 1863, by the Corn Exchange Fire and Inland Navigation Insurance Company against the proceeds of the sale of the schooner Harriet Ross, her boats, tackle, and apparel, which said proceeds are now in the registry of this court, and praying that the same be paid to libelant to answer the prayer of the libelants; and whereas, also, a claim has been filed in said cause by Nathan B. Bradley and the said claimant and Frederick E. Bradley, surety, the parties hereto hereby consenting that in case of default or contumacy on the part of the claimant or his surety execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are hereby,

bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or upon an appeal, by the appellate court.

N. B. BRADLEY,
Pr. C. BRADLEY, *Agent.*
F. E. BRADLEY.

Taken and acknowledged this day of February, 1863.
P. A. HOYNE, *U. S. Com.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Frederick E. Bradley, of the city of Chicago, Illinois, party to the above stipulation, being duly sworn, deposes and says that he resides in the
12 city of Chicago, Illinois, and that he is worth the sum of two hundred and fifty dollars over and above all his just debts and liabilities.

F. E. BRADLEY.

Sworn to this 26th day of February, 1863.
P. A. HOYNE, *U. S. Com., N. D. Ill.*

Endorsed: Filed Feb. 26, 1863.
WM. H. BRADLEY, *Clerk.*

Answer.

To the Honorable Thomas Drummond, judge of the district court of the United States for the northern district of Illinois, in admiralty:

The answer and claim of Nathan B. Bradley, of Bay City, State of Michigan, intervening for his interest, to the libel filed by the Corn Exchange Fire and Inland Navigation Insurance Company, for the proceeds, now in the registry of this court, arising from the sale of the schooner Harriet Ross, her boats, tackle, apparrel, and furniture, alleges as follows:

First. As to the several matters and things stated and charged in the first article of said libel, this claimant admits that at the time the
13 supposed cause of action mentioned in said libel arose, the schooner Harriet Ross was a vessel of over twenty tons burthen, engaged in commerce and trade on the lakes and navigable waters connecting the same, and was duly enrolled and licensed according to the laws of the United States in such cases provided.

Second. As to the several matters and things stated and charged in the second article of said libel, this claimant admits that the schooner Flora Watson on the morning of the second day of November, 1862, and not the third day of November, 1862, was navigating Lake Ontario, and not Lake Erie, as charged in said libel, with a cargo of wheat; but this claimant neither admits or denies that the quantity of said cargo of wheat was fourteen thousand three hundred and forty bushels of wheat, and insists upon proof thereof. And this claimant denies that at the time mentioned in said second article of said libel that there was a good and sufficient lookout on said schooner Flora Watson, properly stationed and engaged in the busi-
14 ness of lookout. And this claimant admits that there was a light placed in the forward part of said schooner Flora Watson, but denies that the same was a good and bright light, so that the same could be seen at any great distance from said schooner; that at the time the weather was hazy, so much so that the light of the said Flora Watson could be seen at only a short distance; admits that the wind was southwest and a fair sailing breeze. And this claimant neither admits or denies how said schooner Flora Watson

was steering, and insists upon proof of same; admits that the schooner Flora Watson and the schooner Harriet Ross collided about the distance stated from Niagara light; that in said collission the said schooner Flora Watson was so much injured that she sunk, together with her cargo, in a few minutes after said collision, and vessel and cargo were wholly lost; and this claimant admits that the value of the vessel and cargo was as stated in said article. But this claimant denies that the said collision was owing to any fault of the said schooner Harriet Ross, or those in charge of her, but that the said collision happened from want of a proper light and lookout on the said
15 schooner Flora Watson, and from the neglect and carelessness of those in charge of said Flora Watson, and that the loss and damage to the said schooner Flora Watson and the loss of her cargo was the fault of the master and crew of the said Flora Watson. And this claimant alleges that about four o'clock on the morning of the second day of November, 1862, the said schooner Harriet Ross—then being nearly opposite the light at the mouth of the Niagara River on her voyage from the port Oswego, in the State of New York, to the port of Chicago, having port tacks on board, said schooner heading about west by north, with wind southwest, said schooner showing a good green light on the Paul bit, all sail set but the gaff-top sail; the mate, Roderick Kar, and hands of said vessel, Maller, Cornish, and Colter, were on deck; Maller and Coulter were on the lookout forward—discovered a bright light at 3¾ o'clock in the morning of the second November, 1862, about one and a half points on the weather bow. The weather being some hazy, said schooner kept on her course. The approaching vessel was nearing
16 the schooner, and seeing that a collision was immediately imminent the helm of the schooner Harriet Ross was put hard down, when the said schooner Flora Watson was close on to the said schooner Harriet Ross and making direct for the center of the schooner Harriet Ross. At this point of time the vessels came together, the schooner Harriet Ross striking the schooner Flora Watson near the fore rigging on her starboard bow. And this claimant alleges that said schooner Flora Watson was unskilfully managed and navigated, and that she had no proper and sufficient lookout, and that the said collision was caused solely for the want of care and skill on the part of the master and crew of the schooner Flora Watson, and not for want of care and skill and proper management of those having charge of the schooner Harriet Ross.

Third. And this claimant denies that the said schooner Harriet Ross was unskilfully managed and navigated, and that she had no proper lookout or light, or that the collision was caused solely by the want of care and
17 skill on the part of the crew of the Harriet Ross; and alleges that said collision was caused solely from the want of a proper lookout and proper care and skill on the part of the crew of the schooner Flora Watson.

Fourth. And this claimant neither admits or denies the allegation in said fourth article, and insists upon proof thereof if libellant wishes to avail himself thereof. And this claimant alleges that he was the sole owner of the schooner Harriet Ross at the time of the sale of her by and under the order of this court; that as such owner he is lawfully entitled to the proceeds of the sale of said schooner now in the registry of this court; that such proceeds amount to the sum of about forty-eight hundred dollars, and he therefore claims the same and humbly prays that, the premises being considered, this honorable court may adjudge and decree that such proceeds be paid to this claimant with his reasonable costs in this behalf sustained, &c.

N. B. BRADLEY,
Per C. BRADLEY, *Agent and Attorney.*

BATES & TOWSLEE, *Proctors for Claimants.*
GEORGE C. BATES, *Advocate.*

18 NORTHERN DISTRICT OF ILLINOIS, *ss:*

Charles Bradley, being duly sworn, says that he is the agent of Nathan B. Bradley; that he has read the foregoing answer, and knows the contents thereof; that the same is true; that the reason why this affiant makes this affidavit is that said Nathan B. Bradley is at Bay City, State of Michigan, and out of the jurisdiction of this court.

CHAS. BRADLEY.

Subscribed and sworn to before me this 26th Feb'y, 1863.

PHILIP A. HOYNE, *U. S. Com., N. D. Ill's.*

Endorsed: Filed Feb. 26, 1863.

WM. H. BRADLEY, *Clk.*

Libellant's proofs.

Depositions of Cooley Remington, Walter Folsom, William C. Van Patten, and Gregory Boulanger, taken before Azariah T. Galt, in the city of Chicago, on the twenty-sixth day of May, A. D. 1863, and subsequent thereto.

Deposition of Cooley Remington, who was duly sworn, &c., did depose and say:

19 My name is Cooley Remington; my age is twenty-five; am an American, and live in New Baltimore, Michigan; am a mariner and sailor; I was first mate of the schooner Watson when she collided with schooner Harriet Ross on Lake Ontario. This took place on the 2nd day of November, 1862. It was on Sunday morning about four o'clock, not quite four. We left the canal about quarter past two, may be a little more or less. The wind was southwest; we were bound for Oswego. After we got out of the canal we steered northeast for two miles, and then we steered northeast by east for six miles, then east-northeast for nigh four miles or three and a half, to the collision occurred. Our speed was not far from seven knots an hour. The sails were on the port side, with the main boom clear off the rigging. We had a good bright light, tiptop light, on the heel of the bowsprit. We had a lookout on the windlass end; he was doing no other business but looking out. I was the officer of the deck at that time; there were on deck at the time six of us, all told; there was one of them at the wheel. From the time we left the canal till the collision

20 she steered well; she always steers well in that kind of a wind; she is a very good steering vessel, only when she is running with a big sea right behind her; all vessels steer badly in that condition; I have seen better steering vessels and have seen worse; she is called a good steering vessel. I did not see the Harriet Ross until after she struck us. When she struck us I was standing a little to the leeward and forward of the foremast; she struck us in the starboard forerigging with her jibboom; she carried all the starboard forerigging away, and I think everything forward, back stays and forerigging, I mean her jibboom, went aft the foremast. The jibboom I did not see until it came into us. None of our boom shifted over to the Harriet Ross; they were all on the port side, and staid there; the fore and main boom were guyed over; I think the Ross must have struck us nigh stem on; I told the lookout to go to his post, is why I know he was there; I was three or four feet from his post when I told him; I saw him standing on his post and looking out; this was three quarters of an hour before the collision.

21 We got aboard of the Ross, and our vessel was sunk after we went on board of the Ross. Our vessel could not have been saved if we had staid aboard of her; there was too big a hole in her; the water was coming in too fast; you could have driven in a yoke of oxen. After I got aboard of the Ross I had a conversation with the mate of Ross about a half

an hour after the collision. I asked him first if he did not see our light. He said he did. He said he thought it was Port Dalhousie light. I asked him how he was heading, and he said west-northwest. I asked him how he thought that was Port Dalhousie light steering in that way. He said he saw the (our) light twenty minutes to a half an hour before the collision. When our captain (of the Watson) went aboard of the Ross he asked some one to hand our signal light on board of the Ross. Some one passed it up. He then asked the captain of the Ross if he should not take the Ross lamp down and put his up, as there were other vessels following them out, and there would be another collision. The two captains hung our light
22 up together. I saw the Ross lamp after I got aboard of her; there was just enough of light in it to show there was a light; it was only a spark; we did not put it out; don't think that any of our rigging touched it; it was hanging in the pall bit; none of our booms were within forty feet of their lamp; none of theirs could be near it.

Cross-examination by Mr. Bates.

I did not see the light of the Ross before the collision; the man on our lookout did not cry out before the collision; there was nothing said on our vessel; no one on board of the Watson saw the light on the Ross till after the collision; there was no signal given that she was coming; there was one man at our wheel, the lookout on the windlass; the second mate aft of the foremast; the other two were heaving on a wench; I am positive there was no alarm given on our vessel before the collision occurred; there were some of our men at the time of the collision heaving up our anchor; all, except the lookout and the wheelsman. About three quarters of an hour
23 before the collision I ordered the lookout to his post; it had been a clear morning; just before the collision it became quite smoky; right overhead it was kind of clear; all of the crew, except captain and steward, were on deck; we saw no other vessels after we came out of the canal before we met this; our anchors were very easy to handle; our anchors were right side of the foremast, one on each side; we had got one over the bow, and were getting the other over when the collision occurred; three men could shove them out; there was a man on board of the Watson, by the name of Gregory Boulanger; he was before the mast; he got on the Ross afterwards; he is in the lumber business now, trading across the lake; the conversation I had was with the first mate of the Ross; don't know his name; they had no seccond mate; I know nothing of the manner of the Ross coming down upon us, except judging from what I saw after the collision; there was no warning of any kind given on our vessel of the collision; some of our boys saw her when the jibboom came right into us; our ship was not yawing or jibing
24 about before the collision; the wind was southwest; not much sea; she was minding her helm.

COOLEY REMINGTON.

Deposition of Walter Folsom, who, after being duly cautioned and sworn, did say:

My name is Walter Folsom; my age is twenty-four; I live in Sombria Village, Canada; am a sailor; I was before the mast on the Watson at the time of the collision; I was helping to get an anchor up on the rail when the collision occurred; I was standing just aft of the foremast at the wench, working it; I was two feet aft the mast; I first saw the Ross when her jibboom was right over my head; her bow was then sixteen or eighteen feet from the Watson; her bowsprit and jibboom was aft our foremast; our sails were

trimed on the port side; they did not swing over when the collision occurred; I saw the light of the Ross after she was into us; it was a very dim light; I saw our captain take their light down and put ours in its place; I saw
25 the mate of the Ross and one of his men talking together; he said he took our light to be Port Dalhousie light; our vessel was steering very well then with short canvass.

Cross-examination by Mr. Bates.

There was no alarm given on our vessel of the approach of the Ross; we were taken entirely by surprise. The men had been at work at the anchors about twenty minutes before the collision. We also had been coiling up halyards and making sail after we left the canal to the collision. We knew nothing about the Ross until the collision occurred, or nearly that time. It had been starlight, but it was thick. Cannot state whether the moon had gone down; don't recollect whether it was a moonlight night. It was not a very light night. I don't recollect about the moon when we came out of the canal; it was not altogether bright; I think it commenced thickening up then. There were several of us about the bows of the other vessel when the mate of the Ross was talking about our light. I remember Gregory Boulanger on our vessel; he was the lookout on our vessel.

WALTER FOLSOM.

26 Deposition of William C. Van Patten, who, being duly sworn and cautioned, did depose and say:

My name is William C. Van Patten; my age is forty-four; I live in Jeffer son County, New York; I am a mariner, captain of a vessel. At the time of the collision Cooley Remington, first mate, had charge of the vessel. I was in the cabin asleep. When I came on deck I first saw the head of the Ross stem on to us laying right over us. I turned around and caught a lamp, as I saw it was a collision, to see what the damage was; took the light and saw a big hole in our vessel, and I told one of our men to bring in the head light, so that I could see better. I told them to save themselves and what they could. I then went on the Ross. She was laying stem on at first. Afterwards I insisted that he should get his canvass down, that we might swim alongside together, which he did, and we swam alongside together. At that time we were sunk so much that we got aboard of the Ross. I at once called the captain's attention to his light. With his consent and
27 assistance, we substituted our light in place of his. When I called his attention to his light, he said it was a pretty poor light, poorer than he was aware of. He said his light had been burning all night and was nearly out. I told him that he was on the port tack. He said yes, and we made a green light of our light that I had first hung up. The chimney of his light was not knocked off. I examined it to see how it was fixed. There was a light on his wick, but scarcely discoverable on account of the chimney being smoked, and it was an old-fashioned lamp called Saucston. They are rarely in use now. It had a very small surface to shine through. Their light was not smoking; the lamp was not more smoky than a lamp burning all night to four o'clock in the morning would be. I heard the mate of the Ross say they took our light to be Port Dalhousie light. About twenty minutes before the collision, he and John Mellen, a lookout on the Ross, consulted together about whether the Watson light was Port Dalhousie light
28 until they liked to collide together. At that time they collided.

Cross-examination by Mr. Bates declined.

WILLIAM C. VAN PATTEN.

Deposition of Gregory Boulanger, taken on the twenty-second day of June, 1863, who, being duly cautioned and sworn, did depose and say:

What is your name, age, occupation, and place of residence?

Ans. My name is Gregory Bourlanger; age, twenty-three; am a sailor; I live in Michigan. I was a mariner on the Flora Watson at the time she collided with the Harriet Ross on Lake Ontario. When the schooner struck us I stood on the starboard side of the windlass end. I was ordered there by the mate to keep a lookout. I had been looking out about three quarters of an hour when she struck us. I did not see the Harriet Ross approach us until she was into us. I was doing nothing else but looking out when she struck us and for three quarters of an hour before. When I got aboard of the Ross I saw her light. It was a bad light. I could not see that
29 it was a light until I got aboard of the Ross. It was an old-fashioned chimney light.

Cross-examination by Mr. Bates.

This was the first trip. I was standing on the windlass end, starboard side. I did not see the Harriet Ross until the jibboom came right over my head. I had been on the lookout for about three quarters of an hour before the collision, and doing nothing else. We were going about seven knots an hour. It was such a night that we could not see a vessel very plain, but we could see a light. We could see the Niagara light about three miles off. The Ross had an old-fashioned light; dont know the name of it; it was a glimmering light. I am certain I did no other work but look out during that time; I had nothing on my mind but that.

GREGORY BELLAGER.

Deposition of William H. Windsor, taken before Charles W. Newton, commissioner, in the city of New York, January 26th, A. D. 1864.

And the said William H. Windsor, being about the age of forty-two
30 years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said William H. Windsor, and he did thereupon depose and say as follows, viz:

I reside in Elizabeth, State of New Jersey, and do business in the city of New York. I am secretary of the Corn Exchange Insurance Company, heretofore known as the Corn Exchange Fire and Inland Navigation Insurance Company, of the city of New York, in the county and State aforesaid. That on or about the twentieth day of February, in the year of our Lord one thousand eight hundred and sixty-two, the said insurance company insured three thousand dollars on the hull and tackle of the schooner called the Flora Watson, and on the twenty-ninth day of October, in the year last above written, the said insurance company insured a further sum of two thousand and seven and 60-100 dollars on the freight list of the said schooner, and on or about the date last above written the said insurance company insured a further sum of three thousand dollars on a certain quantity of wheat,
31 then ladened on board the said schooner, and that the sum total insured as aforesaid by the said insurance company on the hull, tackle, freight list, and cargo of the said schooner Flora Watson amounted to eight thousand and seven and 60-100 dollars. That on or about the second day of November, in the year last above written, the said schooner Flora Watson was proceeding on a voyage through Lake Ontario, and a certain schooner, known as the Harriet Ross, collided with the said schooner Flora Watson,

and, as this deponent believes, the said Flora Watson was then sunk and destroyed, and that the said schooner Flora Watson, her freight list, and cargo were totally lost. That at the time when the said schooner Harriet Ross collided with the said schooner Flora Watson the insurances granted as aforesaid were in full force and effect. That the parties to whom the insurances as aforesaid were granted, have been paid and fully satisfied by the insurance company aforesaid, and that the total amount so paid is eight thousand and seven and 60-100 dollars.

W. H. WINDSOR.

32 Depositions of Levi J. Colburn and B. P. Hutchinson, taken before Henry W. Bishop, jr., in the city of Chicago, and State of Illinois, taken on the eighteenth day of February, 1864.

Levi J. Colburn.

My name is Levi J. Colburn. I am a ship-chandler; reside in city of Chicago. I know the Flora Watson in the fall of '62. I had known her for several years, and was constantly seeing her. I should say that in November, '62, she was worth from seven to eight thousand dollars; that would be her cash value; would not vary much from that.

LEVI J. COLBURN.

Subscribed and sworn to before me this 18th day of February, A. D. 1864.

H. W. BISHOP, JR., *Special Commissioner.*

B. P. Hutchinson.

My name is B. P. Hutchinson. I reside in Chicago, and am grain dealer. About the second of November, 1862, red wheat was worth at Toledo and Oswego at least a dollar a bushel.

B. P. HUTCHINSON.

33 Subscribed and sworn to before me this eighteenth day of February, A. D. 1864.

H. W. BISHOP, JR., *Special Commissioner.*

Papers attached to the depositions of Levi J. Colburn and B. P. Hutchinson.

Manifest of the cargo laden on board the schooner Flora Watson, burthen 295 tons, 8 crew, Van Patten master, bound from the port of Toledo to the port of Oswego, Oct. 29th, 1862.

Packages and contents, 14,400 bu. wheat; shippers, King Bros.; consignees, Howlet & Gardner.

DISTRICT OF MIAMI, *Port of Toledo:*

Van Patten, the master of the within-named vessel, having sworn as the law directs to the annexed manifest, consisting of one article of entry, and delivered depulicate thereof, permission is hereby granted to said master to proceed to the port of Oswego.

Given under my hand and seal of office, at the port of Toledo, this 29 day of October, anno Domini one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-seventh year.

D. E. GARDNER, *Dep. Collector.*

34 No. 1,179. TOLEDO, *Ohio, October 29th*, 1862.

Shipped, in good order and well condition, by King Brothers as agents and forwarders, for account, and at the risk of whom it may concern, on board

the Flora Watson, whereof Van Patten is master, now in the port of Toledo, and bound for Oswego, the following articles as here marked and described, to be delivered in like good order and condition as addressed on the margin, or to his or their assigns or consignees, upon the payment of the freight and charges as noted below, the dangers of navigation, fire, and collisions excepted.

In witness whereof, the master of said vessel hath affirmed to bills of lading of this tenor and date, one of which being accomplished the other to stand void.

Account Spears, Case & Co., 14, 340 bushels red wheat, care Howlett & Gardner, Oswego.

Railroad fr't	$1, 577 40
Fire insurance	23 66
Storage, 1 cent	143 40
Our commiss., ½	71 70
	1, 816 16

For fr't, Toledo to Oswego, per bushel, 14 c., we charge Messrs. Howlett & Gardner $1, 816 16.

C. C. Lake, fr't.

KING BROTHERS.
MAPLES.

Toles: $116 26.

35 *Respondent's depositions.*

The depositions of Roderick Kerr and George Coulter, taken before Seth M. Dunning, a commissioner of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, on behalf of the respondent—that of Kerr, on the twenty-ninth and thirtieth days of April, and that of Coulter on the fourth day of May, A. D. 1863.

Deposition of Roderick Kerr.

1st int. What is your name, age, occupation, and where do you reside?

Ans. Roderick Kerr; age 41; am a sailor. I have made my home in different parts of the United States for the last nine years. Have no family.

2nd int. Are you acquainted with the schooner Harriet Ross and also the schooner Flora Watson?

Ans. I knew the Ross, but did not know the Watson much. I shipped as 2nd mate on the Harriet Ross, from Chicago to Oswego, in the fall of 1862. After we got to Oswego, and after we got ready to return, I was chosen as 1st mate of her. On Friday, on the last day or last day but one, in October, 1862, the schooner Harriet Ross left Oswego on her return trip to Chicago.

36 We got under way, the tug towed us out of port. Got sail on the vessel and cleared up our deck. The wind was about south-south-west, as near as I can recollect. The wind headed us off about the middle of the night, and was a little more westerly. It was my 1st watch from 8 to 12 o'clock, and the captain's from 12 to 4 o'clock. I went below at 12, and the captain then went on deck to his watch. The next day I came on deck at 4 o'clock, and the vessel was lying along the land with a very light breeze. She was between Genesee River and Big Sodus. She was at 8 o'clock up as far as Genessee River when I went below. On Saturday night it was the capt.'s watch from 8 to 12 o'cl'k, and mine from 12 o'cl'k to 4 o'cl'k Sunday morning. At 12 o'cl'k Saturday night I took my

watch; the wind was about southwest, perhaps one point southerly. I went up the rigging on coming on deck to look for a light. I saw Niagara light, and reported it to the capt. before I came down from the rigging. The capt. answered me that he could see it. We were steering then about west or west by south; sometimes she would come up a point, and then go off again. We put the vessel about, at about 2 o'clock, and stood in for the south shore. Continued that course for about 1¾ hours, and then put the vessel about and stood on port tack, heading W.SW off Niagara
37 River. This was about ¼ before 4 o'clock. At the time of the tack, at ¼ before 4 o'clock, I changed the light of the vessel from red to green. The light was on the paul post of our vessel. We had a good light. We burnt kerosene, and it made a brighter light than camphene. It showed a very good light. There was nothing to prevent any vessel which was approaching from discovering our light. At about 4 o'cl'k in the morning I was standing by the forecastle scuttle, one man was standing by me, another man a little way off. After a little before 4 o'clock, and immediately after we put about, we discovered a bright light coming. One of the men reported it to be the Port Delhousie light. I made a reply to the man that it was not, as we had it closed in with the point of land; that Port Delhousie light was a revolving light, and that we should soon open it out when we stood out a little farther. I said that that was a vessel's light, and that she was keeping close into land. She was just coming out of the canal from Port Delhousie. The wind was southwest, and getting more westerly as we got farther into the lake. I think we were heading about west or west half north. I asked the man at the wheel how he was heading, and he said he was heading about west or west half north. I made the remark that
38 that was a vessel running down, and that I did not like the looks of her actions, as she was yawning about. Our vessel kept in her course without shifting. The vessel was pointing to us with a fair wind, with her sheets off, so she was sure to strike us about midships by the time she came to us. As she was pretty close to us she made a yawn to the leeward of us across our bows. We hauled up and came to the windward of her, and then the two vessels struck. I told the man at the wheel to put his helm hard down. This was before the vessels struck. I went to the cabin to get a torch-light, but did not light it; but just as I was doing so, I told the man to put the helm hard down.

Int. After you had remarked this vessel yawning around, and remarked that you didn't like the looks of her actions, did you then send a man to the wheel to assist the one there, and what did you say to the man?

(Objected to by counsel as leading.)

Ans. I sent a man to the wheel, and told him to stand by the man, so that there would be no mistake, if it was necessary to shift.

[It is admitted by counsel that this other vessel was the Flora Watson.—
U. S. COMMISSIONER.]

39 Int. When the Flora Watson came close on the Harriet Ross what directions did you give to the wheelsman?

(Objected to by counsel.)

Ans. I sung out to him to put our helm hard down. He put the helm hard down. The Harriet Ross struck the Watson a glancing blow in the starboard fore rigging. Just before the collision, the Watson was pointing right for us, about midships of our vessel, till she made this yawn. It was when she made this yawn to leeward that I gave this order, in order to clear her. I should think the Watson was then going 6 or 7 miles an hour. The collision occurred a few minutes after 4 o'clock. The watch had just been called, but the men had not turned out.

Int. At the time you gave this order was it possible to avoid a collision?

Ans. I couldn't say whether it was possible to avoid a collision or not, as I could not tell how fast she was coming, but I knew that it was possible to save the Ross. From the Watson's taking a yawn to the leeward, I hoped to bring the vessels alongside, also to prevent the Watson from cutting the Ross in two. The effect of the collision was to bring her fore stay-sail boom against our light, and the chimney became smoked at once. The chimney was knocked off from its place. The night had been fine; the moon
40 had just gone down, and it was just then a little hazy. We were going by the wind with the sheets hauled close aft.

Int. Did you have any conversation with any of the men of the Flora Watson about the management of the Watson, and the cause of the collision?

(Objected to.)

Ans. Their crew got aboard of our vessel, and I went forward to clear our wreck. I called some of the men to help me, and one of their men came forward. I asked him what they were doing on their vessel in yawning about as they did; he said that as they had just come out of the canal there was no one keeping a lookout. He said they were all forward getting their anchors on the bow. This man's name was Gregory Lawshaw, as near as I can pronounce it. He was a seaman before the mast. The capt. of the Watson was Van Patten; his christian name I don't know. I had no conversation with him relative to the management of the Watson. I did not know the wheelsman of the Watson at that time. After the collision the Ross was making water very fast, so that we put all the pumps agoing and bailed out the forecastle with pails. The water gained on us then. The
41 Ross filled with water so fast in the forecastle that she became unmanageable, so we had to let her go on shore. This was between 5 and 6 in the morning, about a mile below Niagara light, on the south shore. We had six men besides myself, capt. and cook. The captain had three men, and I had three. Those on deck with me at the time were John Millon, George Colter, I don't remember the other's given name; his other was Cornish. I had the lookout at this watch. The Watson sunk in 15 or twenty minutes after the collision. I first commenced sailing eighteen years ago, and have been on the lakes as sailor since 1854.

Cross-examination.

1st. At the time I went up into the rigging to look for a light the vessel was heading south-southwest; I do not know exactly how it was. When I came down, in about a half an hour after, the vessel was heading west-southwest; this is the first time that I knew exactly how she was heading. After I went up into the rigging to look for a light it was about three hours before I saw the Watson's light. The light when I first saw it bore
42 about four points on our weather or larboard bow. We were about three or four miles from land when I discovered the Niagara light; and the land ran pretty straight along, the light not being on a promontory. we were then going through the water about 4 or 5 miles an hour. It was about an hour after we were abreast of the Niagara light that the man said that that was the Port Delhousie light. It was about twenty minutes after that that the collision occurred. I was standing forward after shifting the lights from red to green, and the light which we saw coming bore about one point and ½ to the windward of us; that was over the port bow. I was stand-standing on the weather side by the fore rigging. I could not see at this time the hull or sails of approaching craft. I could not see the shore, but a loom which I knew was the shore on the weather bow, but could see it under our stern if I had been looking. The moon at this time was just going down

with a cloud over it. It was becoming a little misty and chilly. When I stood by the bow rigging. I staid there a minute or two and then went aft on the poop deck to see how the vessel was heading. She was heading then about west—west ¼ north. We had just shifted our sails and changed our light, and I was just going aft when the man called my attention
43 to the light. I then made the remark which I have before stated, that it was not the Port Delhousie light, but a vessel's light. I then went to the poop deck to see how the vessel was heading. The tack she was on before she went about that time was about south ½ east. After I went to the wheel to see which way she was heading, I stood on deck a minute or two and then went forward, and then made the remark after I went forward, that I wanted them to keep a good lookout for the light to see which side of us she wanted to go.

Examination here adjourned till 11 o'clock to-morrow morning.

Cross examination.

APRIL 30th.

At the time we first saw the Watson's light, I think we were not off farther than two miles from land. I do not know that I could tell how far off from the Ross the Watson was at that time, but I should think a mile and ½. We were then a little east of the mouth of the Niagara River. It is called 12 miles from Port Delhousie to Niagara River. We were a little west of Niagara River when we collided, and about three miles out from the land when
44 we struck her or she struck us. When I went forward I remained there about three minutes; I could not tell accurately, as I did not look at my watch. I was watching to see which side of us she was going, expecting her to go to the windward of us. Next I walked aft, back and forward, watching the vessel, expecting she was going to the windward of us. I do not know how long I was walking thus, but it was not very long. Then I went to the cabin and got a light-jack, and stood forward with it by the forecastle scuttle. I then endeavored to light it, but just as I was doing so I found that it was too late, and that she would be into us I then sung out to the man at the wheel to put his helm hard down. The vessel answered her helm well and came up into the wind, and would have come up very snug and nice if the other vessel had not been in her way. I couldn't say how far the vessel had swung when the collision took place. I felt a shock, but it did not knock me down. It carried away our jibboom, all our head-gear, the fastening of the jibboom, and knocked over our lamp chimney. We struck her in the starboard forerigging a little abaft of the shoulder. The collision sprung our stern to one side and burst the plank off of one side, so that she leaked.
45 It started both sides and sprung our stem to the port side. The effect of the blow tended to throw us forward, that is our persons. I did not see the fore stay-sail boom strike the lamp, but I found it afterwards to one side and the boom on top of it; the chimney was nearly slipped off to one side and was blackened; I don't recollect that it was broken. The Harriet Ross is a sharp-built vessel forward, and her jibboom has about the ordinary incline of a vessel forward. Her anchors were on the rail like any other vessel when running. She had three jib sails. When I stood forward I stood abaft of the windlass, the other man stood a little to the leeward of me, abaft of the fore scuttle. The Ross was a little more than half loaded with salt, and was drawing about nine feet of water. When we tacked to south by east it was about an hour and ½ or hour and ¾ before we saw the Watson's light; we were sailing as close to the wind as we could sail. We kept on that course about an hour. When we got as near the shore as we wanted we headed westward and continued that course till we got opposite the Niagara River, then we were headed off by the wind a little to the

46 northward, when we discovered the light of the Watson. We collided a little west of the Niagara River, and by the time we got clear of the Watson we were about opposite the mouth of the river. I do not remember of anything else I did but what I have already stated, except looking after the sailing of the vessel to see that she kept steady by the wind on her course.

Re-examination in chief.

Did you hear any one of the men of the Watson say what the condition of their men were? And if so, what was the name of the man and what was the conversation which you may have heard on that subject?

Ans. I overheard their captain say to our captain that he was below at the time, and wasn't on deck.

Recross-examination by Mr. Rae, as counsel for libellants.

It was about the time that my watch expired that the collision occurred. The other watch had been called, but the men hadn't got up yet.

[Mr. Rae here states that it is here suggested by Mr. Bradley that there is a portion of the witness's examination in chief which is probably
47 not put down as the witness intended it, as it makes the statement of the witness in his cross-examination conflict with the examination in chief inasmuch as the witness is made to state that the Watson was just coming out of the canal, when in fact the collision occurred 12 miles east of the canal, and the light of the Watson could not have been seen over two miles. This was made in the presence of the witness, the examination in chief having been read over to the witness and his attention called to whether it was at or from the canal at the time it was written down and the witness not objecting to it.

This statement of Mr. Rae is not to be taken as a part of this deposition, it having been written down by me under the impression that as commissioner I could not refuse to write down such statements when requested by counsel.

S. M. D., *U. S. Commissioner.*

The attorney, Mr. Touslee, objects to Mr. Rae's statement going into this deposition.]

Answer of witness. My attention was not called at the time the deposition was read over to me to the statement made in the commission, where
48 I am made to state that I first saw the light of the Watson coming out of the canal. I was somewhat confused at the time; I didn't intend that it should go down that way at all. When I made the remark about the vessel and light I made the remark that I supposed she had come from the canal; that is the way I intended to have it. This last is what I wished to have as the correction.

RODERICK KERR.

Subscribed and sworn to before me this 30th April, 1863.

S. M. DUNNING, *U. S. Commissioner.*

Deposition of George Coulter, who was duly cautioned and sworn, &c.

He says that he is twenty years old; resides at Coburgh, Canada; occupation, sailor; has been engaged in the business of a sailor for the last six years. Know the schooner Harriet Ross, did know the schooner Flora Watson; shipped on the Harriet Ross as a seaman, at Oswego, N. Y., the last of October, 1862; that was for her up trip. Her cargo was salt. The num-

ber of her crew were four men and a boy, and the mate. I was on
49 watch when the collision occurred, and came on at 12 o'clock on Saturday night. The collision occurred about 20 minutes to 4 o'clock, as near as I can calculate; I carried no watch myself. I was in the mate's watch; there was three men in this watch besides the mate. During this watch we discovered a light, and this light myself and another man thought was the Port Dalhousie light; we reported it to the mate, and the mate told us it was a vessel's light, that the Port Dalhousie was more inland. The light appeared to be about two points to the windward of us, and to be coming from Port Dalhousie; we were standing to the northward on the port tack, with a green light. After we discovered the light we did not change our course. About two o'clock we went on that tack and stood to the northward till the collision. I should think it was about two o'clock that we came about, but I couldn't say, as I didn't carry a watch. During the whole of this watch we had a light standing on the pall-bit. When we first discovered the Watson she had the wind about S. west, I should think. She was steering bad. She was griping; by the term "griping" I mean
50 that the vessel yawned. When the mate first came out on deck at 12 o'clock he went into the fore rigging; the captain had not then gone below. The mate then discovered a light, which he reported to the captain as the Niagara light. I did not hear the captain make any reply to the mate. I couldn't tell how near the Watson was when we first discovered her. She was running at a speed of about 8 miles an hour as near as I can tell. At the time we first discovered her she was pointed as if intending to go across our bows. The mate sung out to the Watson from the forecastle, and asked them where they were going; I heard no reply from them; they were near enough to have heard. I should think about five minutes before the collision, as near as I can get it, a man was sent to the wheel as an assistant who was wanted. He was sent there by the mate. The man went to the wheel and remained there till after the collision. There was a lookout on the Ross during this our watch. He was stationed on the forecastle deck forward. At the time the man was sent by the mate to the wheel I
51 should think the Watson was pointed about amidship to our vessel. The Watson struck the Ross forward. The Watson went down in about 15 minutes, as near as I can judge. The Ross got about and run in ashore, as she was making water fast and we had to put in. At the time of the collision the Ross had a green light; I know this positively. At that point of time the light was a bright light, and had been a bright light during the whole watch. I do not know the men who were with me in that watch; they were strangers to me. The Ross was close hauled; she was well trimed. I can't say exactly whether our crew, all told, were six men or not. The Ross had five men and a boy besides the officers.

Cross-examination.

This has all been read over to me, and I see nothing that I want to correct. I was standing forward on the starboard, I mean the port bow, when we first saw this light. A young man was standing near me, by the name of John—I don't know his other name—when we first called his attention to the light. The mate was walking the deck fore and aft, I could
52 not say how long, but a few minutes after we called his attention to it. The mate came forward; he stood in about the same place we were; he stood aft of us near the weather bow. We could see him standing there all the time we were talking with him. He remained there arguing with us about the light about five or six minutes. He then went on the main deck and walked back and forwards. At this time the light was a good way from us. He remained on the main deck, and we talked about its being

the Port Dalhousie light, and he overheard us, and came forward and said the Port Dalhousie light was more inland; that it was a vessel's light. He remained there some little while with us. He then went aft for a torch-light. Not having time to light the torch, he got up on the forecastle scuttle and sang out to them, asking where they were going. He hadn't hardly been gone a minute for the torch. He was on the run both fore and aft. In about five minutes after he sung out the collision occured, as I guess. We kept on our course till she struck us. She struck us somewhere about the bows—

the port bows—as she was coming down with the wind SW. She
53 struck us with her starboard bow. She had her booms on her port side, and they did not swing over, that I saw. When she struck us she did not swing around, but went down in about 15 minutes afterwards, just as she was. We got the men on board of us and worked as hard as we could to get clear of her. I was at the pumps, and can't say how far she was from us at the time she went down. I stood forward when she struck and run aft to prevent being hit. I did not go forward again but went to work at the pumps aft of the foremast, and worked there till we put about. When the mate came forward with the torch, not having time to light it, he passed us by and went up on to the forecastle and sung out to the Watson where they were going. I mean by us the man on the forecastle with me. This man ran aft with me; he did not man the pump with me. When we first discovered the light of the Watson it was about 2 points to the weather of us, and kept constantly closing in with us; and when the mate went for the torch, she was looking about midships of us. We could see her sails at

that time; didn't take notice whether we could see her hull; if we had
54 look'd pretty sharp we could have seen her hull, I suppose. She was painted black, and I did not see her hull. This is all that I can think of that the mate did from the time that he got the torch-light till the collision, or from the time he saw the light till he got the torch-light, and from the time he got the torch-light till the collision. From the time we first discovered the light till the collision I did not leave my post to go aft, but the other man did, when he was sent to the wheel. The captain did not come on deck until the collision. We had no second mate. I live on that lake. I have been knocking around that lake fishing and sailing, and ought to know the headlands pretty well. I was fishing on the north shore about six months, and have been sailing about six years. When the man went to the wheel he remained until after the collision. I left the vessel and went home at that time, and did not sign that protest. There were three men on my watch besides the mate—two men on the lookout and one at the wheel.

After we discovered the light, I could not say how long it was before
55 the collision; it might have been 20 minutes, may be more or less, after we saw the light. I can't tell how long it was before the man was sent to the wheel; it was somewhere about 15 minutes. I think it was before he got the torch-light; I am not certain whether it was before or after. The mate went aft first and got the torch, and then came forward and sent the man. The man had been aft about 15 minutes when the collision occurred. I can't say for certain.

Redirect examination.

I think the mate came forward and talked with us twice. I can't say for certain.

GEORGE COULTER.

Subscribed and sworn to before me this fourth day of May, 1863.

S. M. DUNNING, *U. S. Commissioner.*

56 The deposition of John Mellen, taken before Azariah T. Galt, a notary public, on the second day of June, A. D. 1863, at Chicago, in said district.

My name is John Mellen; my age is twenty-six; I am sailor; I live in Upper Canada, in Prescott. I was a sailor on the Harriet Ross at the time of the collision with the Watson. The collision took place eight or ten minutes before four o'clock in the morning. This was on the last day of October, 1862. At the time of the collision it was the mate's watch. We were on the port tack at the time. We had been on that tack over an hour, between that and an hour and a half. We showed a green light. As soon as we went on the port tack we showed a green light. It was placed on the pall-bit. We were sailing at the collision about west by north. When I left the wheel we were sailing west-southwest. I left it about two o'clock. The wind was heading us off all the while after I left the wheel, so that at the time of the collision we were sailing west by north. I discovered the light of the Watson about twenty minutes or half an hour before four
57 o'clock in the morning. After we discovered the light of the Watson we kept our course as near as we could for the wind; we did not go about. The Watson, I should think, was going about six knots an hour at the time of the collision. I should think so from the breeze. When I first saw that the Watson was a vessel she was steering to go right in under our bows. I do not believe the Watson had any course. I believe the man at the wheel must have been asleep or she would not have been yawning that way across our bows. I was standing forward on the Ross at the windlass end looking over the bows. There was with me the mate and another person, by the name of George Coulter, I believe. I left the bows and went to the wheel. At this time the Watson was but a little way off the Ross; I should think about 80 rods. I just got to the wheel and got it hard down before it struck. At the time I left the bows I could see the sails of the Watson. When I left the bows the Watson was steering to go under our bows. With our rate of sailing she would have struck us about midships. The Ross struck the Watson abaft the fore rigging a glancing blow. At the time I put the wheel down there was no chance to avoid a collision,
58 and if the wheel had not been put hard down she would have struck us in the centre. When I left the bows to go to the wheel we had a green light, which could have been seen if there had been anyone on their lookout to see it.

1st int. Will you state what the men of the Watson said relative to their lookout after the collision when they came on board of the Ross?

(Objected to by Mr. Rae.)

Ans. I heard the men say there was no one on the lookout at all, that they were all at work getting out the anchors. I know Capt. Van Patten of the Watson. I have sailed with him.

2nd int. Did you have any conversation with Captain Van Patten about the sailing of the Flora Watson?

(Objected to by Mr. Rae.)

Ans. I did have some conversation with him after the Ross had gone ashore.

3d int. What was the conversation?

(Objected to by Mr. Rae.)

Ans. I spoke to the Captain of the Watson who was walking with the Captain of the Ross. I said the boy at the wheel of the Watson must have been asleep to let the vessel yawn around like that. The captain of
59 the Watson spoke, and said the Watson did yawn around sometimes. I could not see myself how the Watson was sailing. As soon as I

saw her sails I ran to the wheel. When I left the wheel she was heading west-southwest, and then she fell off gradually, so that at the time of the collision the mate said we were steering west by north. We did not go into stays after I left the wheel. I told you first we were an hour and a half on that tack; we were more than that. After I left the wheel to the time of the collision we had a nice little breeze, we were going 3½ or 4 knots an hour. The weather was a little hazy, but the sky was clear. If the helm had not been put hard down at the moment it was, the Watson would have struck us about the same as we struck her, except she would have come bows on. I have sailed with Cooley Remmington on board the Algerine. He is a nice enough man aboard of a vessel; he does his work, and that is all that is required of him. The Ross had a good green light until the time of the collision, when it was broken by the stay-sail boom.

Cross-examination by Mr. Rae.

60 At the time I left the wheel to go forward I left James Carness at the wheel. He is a young man, about 17 or 18 years old. I never sailed with him before that trip. When I went forward I stood leaning over the rail, looking all around until I saw the Watson's light. We were then below the Niagara River, in the lake below the Niagara light. The Watson's light was on our weather bow, about a point or a point and a half. I stood looking at the Watson's light about twenty minutes. The mate was forward most of this time. He talked with me about the Watson's light. I said it was a light-house light. It was so far up the lake that I thought it was the Port Dalhousie light. The mate said it was not. I don't know that the other lookout said anything about the light. I continued to look at this light until it approached us; I could not see the hull, only the sails; could not say how they were trimmed, for as soon as I saw the sails I went to the wheel and staid there till we got the Ross to shore. It was not my time at the wheel, but captain wanted me to stay there. It was Carness's time at the wheel; he was forward. I do not know why Carness did not stay at the wheel, except he was pumping. I did not go forward after the col-
61 lision till we went on the beach. (Mr. Rae here admits that the collision took place on Lake Ontario.)

JOHN MELLEN.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

I, Azariah T. Galt, a notary public duly commissioned and qualified for the city of Chicago, in the county of Cook and State of Illinois, acting under and by virtue of an act of Congress entitled An act supplementary to an act to authorize notaries public to take and certify oaths, affirmations, and acknowledgments in certain cases, do hereby certify that the foregoing deposition was taken before me by consent of the proctors of the respective parties to said suit. I further certify that on the second day of June, A. D. 1863, I was attended by Messrs. Bates & Touslee, proctors for respondent, and by Robert Rae, esq., proctor for libellant, and by the said witness, who is of sound mind and lawful age, and the said witness was by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, and
62 the deposition was by me reduced to writing in the presence of the said witness, and from his statement, and after carefully reading the same to the said witness, he subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of delivering the same with my own hand open into the court for which the same was taken. And I do further certify that I am not of counsel, nor proctor for

either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal this second day of June, A. D. 1863.

[SEAL.] AZARIAH T. GALT, *Notary Public.*

Deposition of Captain John Waffle, taken before George Gorham, commissioner, at Buffalo, New York, on the eighth day of July, A. D. 1863, and the said John Waffle, being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, did depose and say:

First int. What is your name, age, residence, and occupation?

Ans. My name is John Waffle; my age is thirty-nine last March;
63 my residence is Byron, Ogle County, Illinois; my occupation is that of a sailor.

Second. If in your answer to the 1st interrogatory you state that you are a sailor, state how long you have been a sailor, and in what vessel or vessels you sailed in the year 1862, and in what capacity.

Ans. I have been a sailor for upwards of twenty years or thereabouts. I sailed as captain of the Harriet Ross in the year 1862, and also, for one trip, I was master of the T. Y. Avery, and I was also mate of the Gipsy one trip.

Third. Was you on board of the schooner Harriet Ross at the time of the Flora Watson? If you answer yes, set forth what was your business on the schooner Harriet Ross, and in what capacity were you acting at said time?

Ans. I was on board of the Harriet Ross at the time of the loss of the Flora Watson. I was captain of the Ross at that time.

4th int. What day of the month and year was it that Flora Watson was lost? and state the time of the (of) said loss.

Ans. The Flora Watson was lost on Sunday, the second day of November, 1862, about four o'clock in the morning.

5th int. Whose watch was it from 12 to 4 o'clock of the morning of the loss of the Watson? At what time did you retire to bed on the morning of the collision?

64 Ans. From 12 to 4 o'clock on the morning of the loss of the Watson it was the mate's watch. I turned in at one o'clock on that morning.

6th int. What kind of a light did the Harriet Ross show at the time you retired? Where was the light? and state particularly the brightness of the light of the Harriet Ross at that time, and at what distance the light of the Harriet Ross could have been seen at that time.

Ans. At the time I turned in the Ross was showing a green light forward on the paul-bit. It was a bright, good light; and, in my opinion, could have been seen two miles easily, and perhaps even three miles.

7th int. Did you know Captain William C. Van Patten? What was his business in the year 1862? In what capacity was he acting on the schooner Flora Watson at the time of her loss?

Ans. I know Capt. William C. Van Patten by reputation, but can't say I knew him personally. He was captain of the Flora Watson at the time of her loss, I suppose.

8th int. Did you have any conversation with Captain Van Patten
65 after the loss of the Watson? If you answer yes, state when and where it was, who was present, and set forth fully the conversation had between you and Van Patten, and what Van Patten stated at that time to you about what the men of the Watson had been doing, and what reason he gave why the Ross had not been seen before the collision.

Ans. After the loss of the Watson I had a conversation with Captain Van Patten. It was on the morning of the collision, in a buggy, coming to Buf-

falo. No one was present by us two, Van Patten and myself. Van Patten said to me: "Capt., you had a red light." I said to him, Capt., you are greatly mistaken about that, for we had a good green light, for that was the first thing that I noticed when I came on deck. This was all that was said in the buggy on the way to Buffalo that I remember. Before this, after breakfast on the Ross, we all went ashore, and on the way up to the tavern some of my men said that the boy at the helm of the Watson must have been asleep. Then Captain Van Patten pointed out the boy to me. He was a green, young-looking boy; and the capt. asked him if he was asleep at the helm, and he said he was not. I heard one of the Watson's men say
66 that they had no lookout on board the Watson. I heard the mate say they were at work forward getting up the anchors.

9th int. Did you or not at any time say to Capt. Van Patten that your light was a pretty poor light; that your light had been burning all night and was nearly out? And set forth fully what you did say to Van Patten.

Ans. I never said to Capt. Van Patten that my light was a pretty poor light, or that my light had been burning all night and was nearly out. Nothing was said about the light that I remember of except what was said on the way to Buffalo.

10th int. Did you have more than one conversation with Van Patten on the morning and day of the loss of the Watson relative to the light of the Ross? If you answer yes, state at how many different times you conversed with Van Patten on this subject, and set forth the particulars of such different conversations.

Ans. I had but one conversation with Capt. Van Patten about the light on the Ross, and that I have related above, took place on the way to Buffalo.

If there had been a proper lookout on the Watson how far could
67 they have seen the Ross?

Ans. If there had been a proper lookout on the Watson they might have seen the Ross a half a mile distant. They could have seen the hull and sails of the Ross that distance.

J. WAFFLE.

BATES & TOWSLEE, *Proctors for Respondent.*

68 On this day, to wit, the ninth day of December, in the adjourned October term of said court, A. D. 1863, in the record and proceeding thereof in said entitled cause is the following entry, to wit:

CORN EXCHANGE FIRE AND INLAND NAVIGATION COMPANY
vs.
PROCEEDS SCHOONER HARRIET ROSS. } Libel.

Now comes the parties by their proctors, and thereupon this cause is set down for hearing on the libel and proofs on file, and after hearing the arguments of advocates as the court takes the same under advisement.

And afterwards, to wit, on the twelfth day of December, in the adjourned October term of said court, A. D. 1863, in the record and proceeding thereof in said entitled cause is the following entry, to wit:

THE CORN EXCHANGE FIRE AND INLAND NAVIGATION
Insurance Company
vs.
PROCEEDS SCHOONER HARRIET ROSS. } Libel.

The court having considered and being fully advised of the matters
69 herein submitted, pronounces for the libelant. And thereupon this cause is referred to Henry W. Bishop, jr., to take the proofs and report the damages herein. And, on the suggestion by the court, the libelant takes leave to amend the libel.

And afterwards, to wit, on the ninth day of February, A. D. 1864, in the December term of said court, A. D. 1863, in the record and proceedings thereof in the said entitled cause is the following entry, to wit:

THE CORN EXCHANGE FIRE AND INLAND NAVIGATION Insurance Co. *vs.* PROCEEDS SCHOONER HARRIET ROSS. } Libel.

Now comes the respondent, by George C. Bates, esq., proctor, and on motion leave is given to cross-examine W. H. Windsor, whose deposition de bene esse has been taken and filed on behalf of the libelant upon his giving due notice of the time and place of taking the same.

On this day, to wit, the eleventh day of February, A. D. 1864, came
70 the said libelant, by his proctor, and filed in said clerk's office its amended libel, which is in words and figures following, to wit:

To the Honorable Thomas Drummond, judge of the United States district court, northern district of Illinois, in admiralty:

The amended libel and complaint of the Corn Exchange Fire and Inland Navigation Insurance Company, a corporation existing by virtue of the laws of the State of New York, against the proceeds, now in the registry of this honorable court, arising from the sale of the schooner Harriet Ross, her boats, tackle, apparel, and furniture, in a cause of collision, civil and maritime, alleges as follows:

First. That at the time the cause of action hereinafter mentioned arose the schooner Harriet Ross was a vessel of more than twenty tons burthen and was enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in differ-
71 ent States and Territories of the United States upon the lakes and navigable waters connecting the said lakes.

Second. That the schooner Flora Watson (whereof the libellant was the underwriter against the danger of navigation upon the hull of said schooner, in the sum of three thousand dollars and upon the freight pending at the time of the collision hereinafter mentioned in the sum of two thousand and seven dollars, and upon her cargo of grain in the sum of three thousand dollars, all of which said several sums of money said libelant, by reason of the loss as hereinafter stated, paid to the owner of said vessel and the shipper of said cargo) was on the morning of the 3d of November, A. D. 1862, navigating Lake Ontario, with a cargo of fourteen thousand three hundred and forty bushels of wheat, with a good and sufficient lookout, properly stationed and engaged in the business of lookout, with a good and bright light
72 properly placed forward so as to be seen by passing vessels, with a good and competent crew in charge of her, the wind being south and a good sailing breeze, the schooner steering east-northeast, about three miles off of Niagara light and about twelve miles from Canada, was run foul of by the schooner Harriet Ross, striking said schooner Flora Watson on the starboard, and so breaking her that within fifteen minutes said schooner sunk, together with her said cargo, whereby libelant was damaged to the amount of five thousand and five hundred dollars, together with interest, from said loss.

Third. That said schooner Harriet Ross was unskillfully managed and navigated, and that she had no proper lookout, wheelsman, or light, and that the collision was caused solely by the want of care and skill on the part of the crew of the Harriet Ross, and not from any want of care of those having charge of the schooner Flora Watson.

73 Fourth. That said libelant has demanded the said damages of the agent of said schooner Harriet Ross, but that the said respondent denies all liability for and on account of said damage.

Fifth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libelant prays that so much of said proceeds aforesaid now in the registry of this honorable court as will satisfy damage, interest, and costs in the premises aforesaid, be paid to libelant, and grant such other and further relief as law and justice may require.

Sworn and subscribed before me, this day of Feb., A. D. 1864.

U. S. A., *N. dis. of Ill's, ss:*

O. B. Sansum, being first duly sworn, deposes and says that he is the agent of the libelant in the above case.

Sworn and subscribed before me this day of Feb., A D 1864.

74 Endorsed: Filed Feb. 11th, 1864.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the fourteenth day of April, A. D. 1864, came the said commissioner to whom this case was referred and filed in said clerk's office his report in said entitled cause, which is in the words and figures following, to wit:

United States district court, northern district of Illinois, in admiralty.

THE CORN EXCHANGE FIRE AND INLAND INSURANCE COMPANY }
vs.
THE PROCEEDS OF THE SCHOONER HARRIET ROSS. }

I, Henry W. Bishop, jr., a special commissioner appointed on the 11th day of December, A. D. 1863, to take proofs and report the amount of money paid by the libelants by reason of the collision complained of in this
75 cause, hereby reports:

That I find from the testimony filed in this case that on or about the twentieth (20) day of February, in the year of our Lord one thousand eight hundred and sixty-two, the said complainants, the Corn Exchange Fire and Inland Navigation Insurance Company, insured three thousand dollars on the hull and tackle of the schooner Flora Watson, and on the twenty-ninth day of October, in the year aforesaid, the said company insured a further sum of two thousand and seven and 60-100 dollars ($2,007 60-100,) on the freight list of the said schooner, and on or about the date last mentioned the said insurance company insured a further sum of three thousand dollars on a certain quantity of wheat then ladened on board the said schooner, and that the sum total insured as aforesaid by the said insurance company on the hull, tackle, freight list, and cargo of the said schooner Flora Watson, amounted to eight thousand and seven and sixty one-hun-
76 dredths dollars.

That the parties to whom the insurance as aforesaid was granted have been paid and fully satisfied by the insurance company aforesaid, libellants herein, and that the total amount so paid in is eight thousand and seven and 60-100 dollars. It also further appears by the testimony of Geo. M. Cone (presented to me) that of the said sum of eight thousand and seven and 60-100 dollars, the sum of three thousand dollars was reinsured by the said Corn Exchange Insurance Company in the Columbian Insurance Company, of New York, the certificate of which issued to said company on the 30th day of

October, 1862, in the sum of three thousand dollars, and said amount paid to the libelants herein on the 3rd day of January, A. D. 1863.

All of which is respectfully submitted.

HENRY W. BISHOP, Jr., *Special Com'r.*

April 13, 1864.

Endorsed: Filed April 14th, 1864.

WM. H. BRADLEY, *Clerk.*

77 On this day, to wit, the twentieth day of April, in the adjourned March term of said court, A. D. 1864, in the record and proceedings thereof in said entitled cause is the following entry, to wit:

THE CORN EXCHANGE FIRE AND INLAND NAVIGATION INSURANCE COMPANY *vs* PROCEEDS SCH'R HARRIET ROSS. } Libel.

Now comes the libellant, by his proctor, and on motion leave is given to amend the libel in conformity with the leave heretofore given.

On this day, to wit, the twenty-first day of April, A. D. 1864, came said libellant, by his proctor, and filed in said clerk's office in said entitled cause its amended libel, which is in the words and figures following, to wit:

To the Honorable Thomas Drummond, judge of the United States district court, northern district of Illinois, in admiralty:

The amended libel and complaint of the Corn Exchange Fire and Inland Navigation Insurance Company, a corporation existing by virtue of
78 the laws of the State of New York, against the proceeds, now in the registry of this honorable court, arising from the sale of the schooner Harriet Ross, her boats, tackle, apparel, and furniture, in a cause of collision, civil and maratime, alleges as follows:

First. That at the time the cause of action hereinafter mentioned arose the schooner Harriet Ross was a vessel of more than twenty tons burthen and was enrolled and licensed for the coasting trade and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States upon the lakes and navigable waters connecting the said lakes.

Second. That the schooner Flora Watson, (whereof the libellant was the underwriter against the danger of navigation upon the hull of said schooner in the sum of three thousand dollars, and upon the freight pending at the time of the collision hereinafter mentioned in the sum of two thousand and seven dollars, and upon her cargo of grain in the sum of three thousand dollars, all of which said several sums of money said libellant, by
79 reason of the loss as hereinafter stated, paid to the owner of said vessel and the shipper of said cargo,) was, on the morning of the 3rd of November, A. D. 1862, navigating Lake Ontario with a cargo of fourteen thousand three hundred and forty bushels of wheat, with a good and sufficient lookout, properly stationed and engaged in the business of lookout, with a good and bright light properly placed forward, so as to be seen by passing vessels, with a good and competent crew in charge of her, the wind being south, and a good sailing breeze, the schooner steering east-northeast, about three miles off of Niagara light, and about twelve miles from Canada, was run foul of by the schooner Harriet Ross, striking said schooner Flora Watson on the starboard side, and so breaking her that within fifteen minutes said schooner sunk, together with her said cargo, whereby libellant was damaged to the amount of five thousand eight hundred dollars, together with interest, from said loss.

Third. That said schooner Harriet Ross was unskillfully managed and navigated, and that she had no proper lookout, wheelsman, or light,
80 and that the collision was caused solely by the want of care and skill on the part of the crew of the Harriet Ross, and not from any want of care of those having charge of the schooner Flora Watson.

Fourth. That said libellant has demanded the said damages of the agent of said schooner Harriet Ross, but that the said respondent denies all liability for and on account of said damage.

Fifth. That all and singular the premises are true and within the admiralty and maratime jurisdiction of this honorable court.

Wherefore the libellant prays that so much of said proceeds aforesaid, now in the registry of this honorable court, as will satisfy damage, interest, and costs in the premises aforesaid, be paid to libellant, and grant such other and further relief as law and justice may require.

O. B. SANSUM,
Agent for the Corn Exchange Ins. Co., of New York.

Sworn and subscribed before me this twenty-first day of April, A. D. 1864.

81 U. S. A., *N. Dis. of Ill's, ss:*

O. B. Sansam, being first duly sworn, deposes and says that he is the agent of the libellant in the above case.

O. B. SANSUM,
Agent for the Corn Exchange Ins. Co. of New York.

Sworn and subscribed before me this twenty-first day of April, A. D. 1864.
WM. H. BRADLEY, *Clk.*

Endorsed: Filed April 21st, 1864.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the sixth day of June, in the adjourned May term, A. D. 1864, of said court, in the record and proceedings thereof in said entitled cause is the following entry, to wit:

THE CORN EXCHANGE FIRE AND INLAND NAVIGATION INSURANCE COMPANY
vs.
PROCEEDS OF THE SALE OF SCHOONER HARRIET ROSS. } Libel.

82 Now come the parties, by their respective proctors, and special commissioner, to whom it was referred to take proof and report the damages of the libelant herein, having heretofore filed his report, by which it appears that the damages sustained by the libelant amount to the sum of five thousand and seven dollars and sixty cents.

It is thereupon ordered and decreed by the court that the respondent pay to the said libelant the said sum of five thousand and seven dollars and sixty cents, the damages so as aforesaid reported, together with the costs and charges herein to be taxed. And thereupon the respondent, by its proctors, prays an appeal to the circuit court, which is allowed upon filing a stipulation in the sum of seven thousand dollars, with security, to be approved under the rules and practice of the court.

On this day, to wit, the eighth day of June, A. D. 1864, came the said respondent, by its proctor, and filed in said clerk's office its appeal
83 bond in said entitled cause, which is in the words and figures following, to wit:

Appeal bond.

United States district court, northern district of Illinois.

Know all men by these presents that we, Nathan B. Bradley, in the Bay City, State of Michigan, Frederick Dickinson, of Chicago, county of Cook and State of Illinois, are held and firmly bound unto the Corn Exchange and Fire and Inland Navigation Insurance Company in the sum of $7,000, for the payment whereof, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 7th June, 1864.

Whereas the above-named Nathan B. Bradley, claimant of the proceeds of the Harriet Ross, now in court, has taken a writ of error to the circuit court of the United States for the northern district of Illinois to reverse a decree rendered in said district court in a case wherein said Corn Exchange
84 and Fire and Inland Navigation Insurance Company were libelants, and the proceeds of the sale of the Harriet Ross, claimed by said Nathan B. Bradley, were respondents: Now, therefore, the condition of this obligation is such that if the above-named Nathan B. Bradley, claimant of the proceeds of the Harriet Ross, shall prosecute such appeal with effect, and answer all costs if he shall fail to make his said plea, then this obligation shall be void; otherwise, to remain in full force and virtue.

NATHAN B. BRADLEY, [SEAL.]
Per C. BRADLEY, *his Att'y in Fact.*
FREDERICK DICKINSON. [SEAL.]

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Frederick Dickinson, merchant, of Chicago, being duly sworn, doth depose and say that he is actually worth over and above all his debts, the sum of seven thousand dollars, and that he has property in the State of Illinois equal to that sum.

FRED'K DICKINSON.

Sworn and subscribed this 7 June, 1864.
[SEAL.] W. WARREN COBE, *Notary Public.*

85 Approved with the consent of libelant's proctor.

WM. H. BRADLEY, *Clk.*

Filed June 8th, 1864.

WM. H. BRADLEY, *Clk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify that the above and foregoing is a true and correct transcript of the record of the district court of the United States for said district in the cause wherein the Corn Exchange Fire and Inland Navigation Insurance Company is the libelant and the proceeds of the schooner Harriet Ross is the respondent, made up pursuant to the fifty-second rule in admiralty of the Supreme Court of the United States, as the same remains in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this sixteenth day of June, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the 88th year.

WM. H. BRADLEY, *Clerk.*

Endorsed: Filed June 25, 1864.

WM. H. BRADLEY, *Clk.*

86 On this day, to wit, the twenty-second day of July, in the July term of said court, A. D. 1864, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

THE CORN EXCHANGE FIRE AND INLAND NAVIGATION Insurance Company
vs.
THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS. } Appeal.

Now come the parties, by their respective proctors, and thereupon this cause is set down for hearing upon the record and proofs filed herein, and this court, after hearing the arguments of the respective counsel, and not being sufficiently advised in the premises, takes time to consider.

And afterwards, to wit, on the twenty-ninth day of July, in the July term of said court, A. D. 1864, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

87 THE CORN EXCHANGE FIRE AND INLAND NAVIGATION Insurance Company
vs.
THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS. } Appeal.

Now come the parties by their proctors, and the court having fully considered and being now fully advised of the matters herein submitted, affirms the decree of the district court. And it appearing from the record herein that a decree was rendered in the district court on the sixth day of June, A. D. eighteen hundred and sixty-four, in favor of the libellants for the sum of five thousand and seven dollars and sixty cents damages, together with costs, it is thereupon ordered, adjudged, and decreed by the court that the respondent pay to the libellant the said sum of five thousand and seven dollars and sixty cents, the amount of the decree aforesaid, together with forty-four dollars and twenty-three cents, the interest on said decree from the said sixth day of June, A. D. eighteen hundred and sixty-four, amounting in all
88 to five thousand and fifty-one dollars and eighty-three cents, together with the costs and charges herein to be taxed, and also the costs in the court below. And it is further ordered that a summary judgment be, and the same is hereby, accordingly entered against Nathan B. Bradley as principal, and Frederick Dickinson as stipulator, in the sum of seven thousand dollars, being the amount of the stipulation given in the appeal from the decree of the district court. And it is further ordered that unless said decree for damages and costs shall be paid within ten days, execution to issue against the respondent and his stipulators therefor to the marshal of said district for the sum of seven thousand dollars, the amount of the penalty in the stipulation entered into, to be discharged and satisfied upon the marshal making thereon the decree for damages, interest and costs.

89 On this day, to wit, the twenty-ninth day of July, A. D. 1864, came the respondent, by his attorneys, and filed in said clerk's office in said entitled cause their notice of appeal, which is in the words and figures following, to wit:

Circuit court of the United States for the northern district of Illinois.

THE CORN EXCHANGE FIRE AND INLAND NAV. INSURance Co., libellants,
vs.
THE PRECEEDS OF THE HARRIET ROSS, respondents.

The above-named respondents, conceiving themselves aggrieved by the

final decree entered in the above-entitled cause this 29th of July, 1864, doth hereby appeal to the Supreme Court of the United States, and the said respondent prays that her appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the Supreme Court.

July 29, 1864.

BATES & TOWSLEE,
Proctors for Respondents.

90 Endorsed: Filed July 29th, 1864.

WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the fifth day of August, A. D. 1864, came the respondent, by his proctors, and filed in said clerk's office in said entitled cause his appeal and appeal bond; which said appeal and appeal bond are in the words and figures following, to wit:

THE PROCEEDS OF SALE OF THE SCHOONER HARRIET Ross, her tackle, apparel, &c., Nathan Bradley, claimant and appellant,
vs.
THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INSURANCE Company, respondent.

To the honorable the Supreme Court of the United States:

The appeal of Nathan Bradley, the above-named claimant and appellant, respectfully showeth that on the 24th day of February, 1863, the above-named the Corn Exchange Inland Navigation and Fire Insurance Company filed its libel in the district court of the United States for the northern
91 district of Illinois against the proceeds of the sale of the schooner Harriet Ross, her tackle, apparel, &c., in a cause civil and maritime, for the recovery of damages alleged to have been sustained by said respondent by collision of the schooner Flora Watson with the said schooner Harriet Ross, on Lake Ontario, in which collision the said schooner Flora Watson was lost, and the said respondent had at the time of said collision an insurance which respondent had paid, and that the proceeds above-mentioned are now in the said district court and now detained there.

That your petitioner filed his claim and answer to said libel, and the said libellant replied thereto, and such proceedings were had in the said cause, that on the 6th day of June, 1864, a final decree was made and pronounced therein, by the said district court, wherein it was in substance adjudged that the said libellant recover against the proceeds of the sale of the schooner Harriet Ross, her tackle and apparel, &c., the sum of five thousand fifty-one dollars and eight-three cents, together with costs, and that after such final decree your petitioner duly appealed therefrom to the circuit court of the
92 United States for the northern district of Illinois, and the said cause was removed thereby into the said circuit court, and there tried anew, and such proceedings were had in the said circuit that afterwards, on the 29th day of July, 1864, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed with costs, and that the said appellee have execution, and that the stipulators cause their stipulations to be fulfilled, which said decree of the said circuit court is, as this appellant is advised, erroneous and ought to be reversed. Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay,

and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed, and a decree made dismissing said libel, with costs, or
93 such other decree as to the said Supreme Court shall seem just.

Dated Chicago, 3d August, 1864.

NATHAN BRADLEY.

Bates & Towslee, proctors for appellants. Geo. C. Bates, Advocate.
Endorsed: Filed August 5th, 1864.

WM. H. BRADLEY, *Clk.*

Appeal bond.

Circuit court of the United States of America, northern district of the Illinois, in the circuit.

THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET Ross, her tackle, &c. Nathan B. Bradley, claimant and appellant.
vs.
THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INsurance Company, appellee.

Know all men by these presents that we, Nathaniel B. Bradley, Charles Bradley, and Frederick E. Bradley, are held and firmly bound unto the above named, the Corn Exchange Inland Navigation and Fire Insurance
94 Company, in the sum of six thousand dollars, to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated the 5 day of August, in the year of our Lord one thousand eight hundred and sixty-four.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to reserve the decree rendered in the above suit in the circuit court of the United States for the northern district of Illinois:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation to be void; otherwise, the same shall be and remain in full force and virtue.

CHAS. BRADLEY. [L. S.]
F. E. BRADLEY. [L. S.]

95 Sealed and delivered, and taken and acknowledged this fifth day of August, 1864, before me.

WM. H. BRADLEY, *Clk.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Charles Bradley and Frederick E. Bradley, being duly sworn, depose and say, and each for himself saith, that he is worth the sum six thousand dollars, over and above all his just debts and liabilities.

F. E. BRADLEY.
CHAS. BRADLEY.

Sworn to this fifth day of August, A. D. 1864, before me.

WM. H. BRADLEY, *Clk.*

I approve the bond and the sufficiency of the sureties thereto.
Endorsed: Approved. THOMAS DRUMMOND.

Filed August 5th, 1864.

WM. H. BRADLEY, *Clk.*

96 NORTHERN DISTRICT OF ILLINOIS:

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify that the foregoing is a true and complete transcript of the record, and all the proceedings had in the cause, wherein the Corn Exchange Fire and Inland Navigation Insurance Company is the libellant, and the proceeds of the sale of the schooner Harriet Ross is the respondent, as the same appears from the records of said court now in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said district, this twenty-first day of November, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-ninth year.

WILLIAM H. BRADLEY, *Clerk.*

97 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States within and for said northern district, do hereby further certify that the transcript hereto appended, making from pages one to twenty, inclusive, contains a full record of the proceedings of the district court of the United States for said northern district of Illinois, (as certified to me by the clerk of said district court,) in the original libel case of George E. Purrington and Abner R. Scranton against the schooner Harriet Ross, under which the said intervening libel of the Corn Exchange Fire and Inland Navigation Insurance Company against the proceeds of the sale of the schooner Harriet Ross was filed, and that said record is so appended to this transcript at the instance of Robert Rae, esq., proctor for said libelant in said intervening libel, subject, however, to objection by Messrs. Bates & Towslee, proctors for the respondent in said intervening libel.

In testimony whereof, I have hereunto set my hand and affixed the
98 seal of said circuit court, at my office in Chicago, in said northern district, this first day of December, A. D. 1864.

WM. H. BRADLEY, *Clerk.*

99 Pleas in the district court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drumond, judge of said court, on Wednesday, the fourth day of February, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-seventh year.

WM. H. BRADLEY, *Clerk.*

GEORGE E. PURRINGTON AND ABNER R. SCRANTON *vs.* SCHOONER HARRIET ROSS. } In admiralty.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the sixteenth day of January, in the year of our Lord one thousand eight hundred and sixty-three, came George E. Purrington and Abner R. Scranton, libellants, by Gallup & Hitchcock, their proctors, and filed in the office of the clerk of the district court of the United States for the northern district of Illinois, at Chicago, in said district, their libel against schooner Harriet Ross, respondent.

Also, at the same time, filed their stipulation for costs, and sued out their monition in said cause, which said libel and stipulation, and said mo-
100 nition, together with the marshal's return thereon, and the proof of notice by publication, are in the words and figures following, to wit:

To the Hon. Thomas Drummond, judge of the district court of the United States for the northern district of Illinois, in admiralty.

George E. Purrington and Abner R. Scranton, ship-chandlers and sail-makers, residing and doing business under the firm, name, and style of Purrington & Scranton, at Chicago, in the district aforesaid, exhibit this their libel against the schooner Harriet Ross, whereof John Waffle is or lately was master, her boats, tackle, apparel, and furniture, against all persons lawfully intervening for their interest therein, in a cause of contract civil and maritime.

And thereupon the said libellants do allege and articulately propound as follows, to wit:

First. That the said schooner is now lying at the port of Chicago, in the district aforesaid, is a vessel of more than twenty tons burthen, and at the time when the cause of action hereinafter stated and set forth arose was enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States upon the lakes and navigable
101 waters connecting the said lakes.

Second. That on or about the thirteenth day of October, 1862, while the said schooner was lying at Chicago, in the district aforesaid, the said master thereof represented to the libellants that the said schooner stood in need of the supplies hereinafter mentioned, in order to render her seaworthy and competent to proceed on her intended voyage, and requested the libellants to furnish such supplies, and that the libellants, in pursuance of such representation and request, on the day and at the place last above mentioned, undertook to furnish supplies for, and did supply, said schooner with ship stores, which supplies and the value thereof are truly and more particularly stated and described in the schedule or account hereunto annexed, and which amount in the whole to the sum of seventy-two and 1-100 dollars and cents.

Third. That said supplies were so furnished by the libellants on the credit of the said schooner as well as of the owners and the said master thereof, and were suitable, proper, and necessary for the purpose of enabling the said schooner to depart in safety, and the value thereof is by the maritime law and the laws of the State of Illinois a lien upon said vessel, her boats, tackle, apparel, and furniture.

Fourth. That the aforesaid sum of seventy-two dollars and one cent
102 still remains wholly unpaid and due to the libellants, although they have often requested the said master to pay the same.

Fifth. That all and singular the premises are true.

Wherefore the libellants pray that process in due form of law may issue against the said schooner Harriet Ross, her boats, tackle, apparel, and furniture, and that this honorable court will pronounce for their aforesaid demand, and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice may appertain, and as the court is competent to give in the premises.

GEORGE E. PURRINGTON,
By ABNER R. SCRANTON,
ABNER R. SCRANTON, *Libellants.*

GALLUP & HITCHCOCK, *Libellants' Proctors.*

On the 10th day of January, 1863, appeared personally Abner R. Scranton, and was sworn to the truth of the foregoing libel before me.

BENJ. E. GALLUP, *Notary Public.*

103 *Schedule above referred to.*

CHICAGO, *Jan'y 8th*, 1863.

592. Sch'r Harriet Ross to Purrington & Scranton DR., ship-chandliers and sail-makers, dealers in manilla and tarred rope, duck anchors, chains, &c., 209 South Water Street.—G. E. Purington—A. P. Scranton.

Oct. 13. To 4¼ lbs. marline, 20	$0	85
8½ lbs. hand leads, 1*s*.	1	06
6¼ lbs. spun yarn, 17	1	06
4 yds. duck, No. 4, 6*s*.	3	00
6 yds. duck, No. 10, 60	3	60
1 ps. beeswax		20
441 lbs. m. rope, 14	61	74
Cartage		50
	72	01

Endorsed: Filed this 16th day of January, 1863.
WM. H. BRADLEY, *Clerk.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

District court, February term, A. D. 1863.

Whereas a libel was filed in this court on the 10th day of , A. D. 1863, by George E. Purrington and Abner R. Scranton against the Harriet Ross, boats, tackle, apparel, and furniture, for the reasons and causes in
104 the said libel mentioned; and whereas a claim has been filed in the said cause by , and the said and suret, the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimants or their surety, execution may issue against their goods, chattles, and lands, for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

ABNER R. SCRANTON.
GEO. E. PURRINGTON,
By ABNER R. SCRANTON.
GEO. B. DUNHAM.

Taken and acknowledged this 10th day of January, A. D. 1863, before me.
FRED. W. COLE, *U. S. Com.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

George B. Dunham, party to the above stipulation, being duly sworn, deposes and says that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars, over and above all his debts and liabilities.

105 GEO. B. DUNHAM.

Sworn this 10th day of Jan'y, A. D. 1863, before me.
FRED. W. COLE, *U. S. Com'r.*

Endorsed: Filed Jan'y 16th, A. D. 1863.
WM. H. BRADLEY, *Clerk.*

THE UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

The United States of America to the marshal of the northern district of Illinois, greeting:

Whereas a libel hath been filed in the district court of the United States in and for the northern district of Illinois, on the 16th day of January, in the year of our Lord one thousand eight hundred and sixty-three, by George E. Purrington and Abner R. Scranton, against the schooner Harriet Ross, her boats, tackle, apparel, and furniture, for reason and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the sum of seventy-two dollars and one cent, the damages alleged in said libel, besides costs of suit:

106 You are therefore commanded to attach the said schooner Harriet Ross, her boats, tackle, apparel, and furniture, and to detain the same in your custody until the further order of this court respecting the same, and to give due notice by publication in some daily newspaper, printed in the city of Chicago, for fourteen days previous to the day of trial, and by notice pasted up in the most public manner for the space of fourteen days at or near the place of trial of such seizure and libel, to all persons claiming the said schooner, her boats, tackle, apparel, and furniture, or knowing or having anything to say why this court should not pronounce against the same according to the prayer of said libel, and that they be and appear before the said court, to be held in and for the northern district of Illinois, at the United States court-room, in the city of Chicago, in said district, on the first Monday in February next, if that be a day of jurisdiction, if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return, together with this writ.

107 Witness the Honorable Thomas Drummond, judge of the said court, this 16th day of January, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the 87th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents that I have appointed and by these presents do appoint Whitney Frank my true and lawful deputy to execute the annexed writ, (George E. Purrington *et al. vs.* Schooner Harriet Ross,) and to make true return thereon according to law.

[SEAL.] J. R. JONES,
United States marshal of the northern district of Illinois.

By virtue of the within writ, I have, on this 16th day of January, A. D. 1863, attached the within-named schooner Harriet Ross, and have the same now in my custody.

J. R. JONES, *U. S. Marshal,*
By WHITNEY FRANK, *Special Deputy.*

Public notice is hereby given that on the 16th day of January, A. D. 1863, a monition issued out of the clerk's office of the district court
108 of the United States for the northern district of Illinois in a cause, civil and maritime, wherein George E. Purrington and Abner R. Scranton are libellants against the schooner Harriet Ross, her boats, tackle,

apparel, and furniture, for the sum of $72 1-100 by virtue of which I have taken the same into custody.

The said monition is returnable on the first Monday of February, A. D. 1863, when, if that be a day of jurisdiction, (or if not, then on the next day of jurisdiction,) a hearing will be had of the cause. All persons interested in the said schooner, her boats, tackle, apparel, or furniture, are required then to interpose their claim, if any they have, otherwise the same will be pronounced against for the debt and costs, as prayed for in the libel.

Chicago, January 16, 1862.

J. R. JONES,
U. S. Marshal, northern district of Illinois.
By GEORGE L. WEBB, *Deputy.*

Endorsed: Filed this 27th day of January, A. D. 1863.
WM. H. BRADLEY, *Clerk.*

109 On this day, to wit, the fourth day of February, A. D. 1863, came said libellants, by their proctors, Messrs. Gallup & Hitchcock, and filed in said clerk's office their affidavit in said entitled cause, which said affidavit is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*
District court, February term, A. D. 1863.

GEORGE E. PURRINGTON AND ABNER R. SCRANTON
vs.
SCHOONER HARRIET ROSS. } In admiralty.

Abner R. Scranton, being duly sworn, deposes and says that he is one of the libellants named in the above-entitled cause; that he has examined the schedule annexed to the libel filed in said cause, and that the same is correct; that the prices mentioned in said schedule are just and reasonable; that said items mentioned in said schedule were necessary and proper in order to enable her to proceed on a voyage already commenced; and that said items were sold on the credit of the said vessel; that there is now due and unpaid libellant from said vessel the sum of seventy-two
110 dollars and one cent, which has been demanded of the owner, but which he wholly neglects or refuses to pay. And further the deponent saith not, &c.

ABNER R. SCRANTON.

Sworn and subscribed before me this 3d day of February, A. D. 1863.
BENJ. E. GALLUP, *Notary Public.*

GALLUP & HITCHCOCK, *Proctors for Libellants.*

Endorsed: Filed Feb'y 4th, A. D. 1863.
WM. H. BRADLEY, *Clerk.*

On this day, to wit, the fourth day of February, A. D. 1863, in the December term, A. D. 1862, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

GEORGE E. PURRINGTON AND ABNER R. SCRANTON
v.
SCHOONER HARRIET ROSS. } Libel.

The marshal having returned on the monition issued in this behalf that he had attached the schooner Harriet Ross, her boats, tackle, apparel, and furniture, and had given notice to all persons interested that the court would, on this day, proceed to the trial and condemnation thereof, should no claim be interposed therefor, whereupon, on motion of Gallup &

111 Hitchcock, proctors for the libellants, proclamation was made for all persons interested in said schooner, her tackle, apparel, and furniture, to appear and interpose their claims and no person appearing on motion, it is ordered by the court that the default of all persons be and the same are accordingly entered herein, and that said schooner Harriet Ross, her boats, tackle, apparel, and furniture, be condemned and sold to pay the demand of the libellants. And for as much as the demand of the libellants is uncertain, the said libellants, by their said proctor, filed a supplemental affidavit of the correctness of their demand and the amount due thereon, and the court, after inspecting the same, and being fully advised, finds the amount due the libellants for the materials furnished in the sum of seventy-two dollars and one cent.

It is thereupon considered and adjudged by the court that the respondent pay to the libellant the said sum of seventy-two dollars and one cent, the damages aforesaid, together with the costs and charges herein to be taxed. And on further motion it is ordered by the court that said schooner Harriet Ross, her boats, tackle, apparel, and furniture, be sold by the marshal, under and by virtue of a writ of venditioni exponas to be issued by the clerk
112 of this court, and that upon the return thereof he pay the proceeds of said sale into the registry of this court.

On this day, to wit, the fourth day of February, A. D. 1863, a writ of venditioni exponas issued out of said clerk's office against said respondent; which said writ, together with the return of the marshal thereon, is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

The United States of America to the marshal of the northern district of Illinois, greeting:

Whereas a libel was filed in the district court of the United States for the northern district of Illinois, on the sixteenth day of January, in the year of our Lord one thousand eight hundred and sixty-three, by George E. Purington and Abner R. Scranton against the schooner Harriet Ross, her boats, tackle, apparel, and furniture, praying that the same may be condemned and sold for the causes in said libel alleged:

And whereas the said schooner Harriet Ross, her boats, tackle, apparel, and furniture, been attached by the process issued out of the said district court in pursuance of the said libel, and is now in custody by virtue
113 thereof, and such proceedings have been thereupon had that, by the final sentence and decree of the said court in this cause made and pronounced on the 4th day of February, in the year of our Lord one thousand eight hundred and sixty-three, the said schooner Harriet Ross, her boats, tackle, apparel, and furniture, was condemned and ordered to be sold by you, the said marshal, after giving 10 days' notice of such sale, according to law:

Therefore you, the said marshal, are hereby commanded to cause the said schooner Harriet Ross, her boats, tackle, apparel, and furniture, so condemned and ordered to be sold, to be sold in manner and form upon the notice and at the time and place by law required; and that you have the money arising from such sale in said court at Chicago, on the first Monday in March next, eighteen hundred and sixty-three, and that you then pay the same to the clerk of the court. And have you also then and there this writ.

Witness the Hon. Thomas Drummond, judge of the said court, at Chicago, in the northern district of Illinois, this 4th day of February, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-seventh.

[SEAL.] WM. H. BRADLEY, *Clerk.*

GALLUP & HITCHCOCK, *Proctors.*

114 By virtue of the within writ I have, on this 16th day of February, A. D. 1863, after advertising according to law the sale thereof, offered to public sale the within-named schooner Harriet Ross, her boats, tackle, apparel, and furniture, and James H. Woodworth having bid therefor the sum of five thousand dollars, which was the highest and best bid therefor, I sold to the said James H. Woodworth the said schooner, &c., for said sum of five thousand dollars, and have the money now in court.

J. R. JONES, *U. S. Marshal*,
By GEO. L. WEBB, *Deputy*.

On this day, to wit, the eighteenth day of February, A. D. 1863, the affidavit of James H. Woodworth was filed in said clerk's office in said entitled cause. Which said affidavit is in the words and figures following, to wit:

STATE OF ILLINOIS, *Cook County, ss:*

I, James H. Woodworth, having first been duly sworn, depose and say that on the 16th of February, A. D. 1863, I became the purchaser of the schooner Harriet Ross at a sale by the marshal of northern district of Illinois; that at the time of such sale I held a mortgage upon said
115 vessel as collatteral security for the payment of a large sum of money due and owing to me from Nathan B. Bradley.

And I further depose and say that I became purchaser of said vessel at such sale in order to perfect title in me to said vessel, and thus better protect my interests against loss.

And I further depose and say that I have no knowledge of any outstanding claims or obligations existing against said vessel, and that I do not believe that any do exist, excepting the mortgage claim that I control.

J. H. WOODWORTH.

Subscribed and sworn to before me this 17th day of Feb'y, A. D. 1863.
BENJ. E. GALLUP, *Notary Public*.

Endorsed: Filed Feb. 18, 1863.
WM. H. BRADLEY, *Clk*.

On this day, to wit, the eighteenth day of February, A. D. 1863, the affidavit of Charles Bradley was filed in said clerk's office in said entitled cause, which said affidavit is in the words and figures following, to wit:

STATE OF ILLINOIS, *Cook County, ss:*

116 Charles Bradley, having first been duly sworn, deposes and says that he is the agent of Nathan B. Bradley, who is a resident of the State of Michigan; that he has been such agent since the month of June, A. D. 1858; that as such agent he has, since the said month of June, had the care of the schooner, Harriet Ross, paying her liabilities, and all claims accruing against her, except a certain mortgage upon said vessel executed by the said Nathan B. Bradley to James H. Woodworth, and a certain claim of Messrs. Purington & Scranton for the sum of seventy-two 1-100 dollars.

And this deponent further says that the said sch'r was sold on the 16th day of Feb'y, 1863, by the marshal for the northern district of Illinois, under and by virtue of a decree made by the hon. judge of the U. S. dist. court for said district in the matter of the libel filed in the said court by the said Messrs. Purrington & Scranton against the said schooner Harriet Ross for the amount of their said claim.

And this deponent further says that at the time of such sale of the said schooner there was, besides the said claim of Messrs. Purrington & Scranton and the said mortgage to said James H. Woodworth, only due and unpaid on account of said sch'r the sum of about seventeen dollars, which
117 sum has since been paid by this deponent as said agent.

And this deponent further says that he has no knowledge of any other claim or outstanding obligation on account of the said schooner, and that he does not believe that any exist.

And this deponent further says that the said sale of the said schooner was made to James H. Woodworth without collusion with the said libellants or any person or persons whomsoever, but for reason that the said Nathan B. Bradley is indebted to the said Woodworth in a large amount of money.

CHARLES BRADLEY.

Subscribed and sworn to before me this 17th day of February, A. D. 1863.

BENJ'N E. GALLUP, *Notary Public.*

Endorsed : Filed Feb. 18, 1863.

WM. H. BRADLEY, *Clk.*

118 NORTHERN DISTRICT OF ILLINOIS, *ss :*

I, William H. Bradley, clerk of the district court of the United States within and for said northern district of Illinois, do hereby certify the foregoing transcript, containing pages from one to nineteen inclusive, to be a full, true, and perfect copy from the records of the said court of all the proceedings which have been had therein in said libel, in admiralty, of Purington & Scranton against the schooner Harriet Ross, as the same now remain in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said northern district, this 13th day of November, A. D. 1864.

[SEAL.] WM. H. BRADLEY, *Clerk.*

119 By the Honorable Thomas Drummond, one of the judges of the circuit court of the United States for the northern district of Illinois.

To the Corn Exchange Inland Navigation and Fire Insurance Company :

Whereas Nathan B. Bradley, claimant of the surplus and remnants of the sale of the schooner Harriet Ross, her tackle, apparel, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the northern district of Illinois, made in favor of the Corn Exchange Inland Navigation and Fire Insurance Company against the surplus and remnants of the sale of the schooner Harriet Ross, her tackle, apparel, &c., and has filed the security required by law ; you are therefore cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice in the premises.

Given under my hand, at the city of Chicago, in the northern district of Illinois, this 6th day of August, A. D. 1864, and of the independence of the United States the eighty-eighth.

THOMAS DRUMMOND.

120 NORTHERN DISTRICT OF ILLINOIS, *ss :*

I, Edwin C. Towslee, being duly sworn, do say that I served the within citation on the appellee within named by leaving with R. Rae, esq., the proctor of said appellee, at his office, in Chicago, Illinois, on the 11th of August, 1864, a true copy of the within citation.

EDWIN C. TOWSLEE.

Subscribed and sworn to before me this twenty-eighth day of September, 1864. OBADIAH JACKSON, JR., *Notary Public.*

Filed 7th December, 1864.

Supreme Court of the United States.

No. 120.

NATHAN BRADLEY, CLAIMANT, &c., APPELLANT,

vs.

THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INSURANCE COMPANY.

ROBERT RAE, OF CHICAGO, ILLINOIS, FOR APPELLEE.

The facts are sufficiently stated in the libel, answer, and proofs, and the appellee contends that the decrees of the district and circuit court should be affirmed.

Four points are made against the Ross.

I.

The want of a skillful and competent man at the wheel.

Fol's 60, 38, 61, 43, 51, 53, 54, 59.

II.

Want of a proper light.

Fol's 39, 43, 56, 57, 49, 22, 25, 27, 66, 64, 53, 38.

III.

That the Ross changed her course so as to run into the Watson's bow.

At the time of the collision the Watson was heading E. N. E., and the Ross W. ½ N., and the Watson was to the southard of the Ross. The larboard side of the Watson would be to the starboard side of the Ross, yet the Ross struck the Watson on the starboard bow abaft the shoulder.

IV.

That the officers and lookout of the Ross mistook the Watson's light for Port Dalhousie light, and that such mistake grew out of ignorance and unskillfulness.

V.

The libellant is entitled to a decree, because it is alleged in his libel and not denied in the answer, that he was the underwriter of hull and cargo of the Watson, and has paid the full amount, by reason of the loss, for which the court gave him a decree.

There is no exception to the commissioner's report of the damages libellant has suffered, and the point of insufficiency of proof should have been made at the time.

VI.

The onus is on appellant to *show* that any part of the decree is erroneous: if there is evidence not presented in the record, and appellant desired to make any point, the defect is theirs.

RICHARD RAE, *for Appellee*

SUPREME COURT OF THE UNITED STATES.

No. 120.—December Term, 1866.

NATHAN BRADLEY, CLAIMANT OF THE PROCEEDS OF THE SALE OF THE SCHOONER HARRIET ROSS, APPELLANT,

vs.

THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INSURANCE COMPANY.

BRIEF AND ARGUMENT ON THE PART OF THE APPELLANT.

GEORGE B. HIBBARD, *for Appellant, Buffalo, N. Y.*

SUPREME COURT OF THE UNITED STATES.

No. 120.

NATHAN BRADLEY, CLAIMANT, &c., APPELLANT,
vs.
THE CORN EXCHANGE INLAND NAVIGATION AND FIRE INSURANCE COMPANY.

Brief and Argument on the part of the App'nt.

GEORGE B. HIBBARD, *of Buffalo, N. Y., for Appellant.*

This is a cause of collision commenced by The Corn Exchange Inland Navigation and Fire Insurance Company, against the proceeds of the sale of the Schooner Harriet Ross, by libel filed in the District Court of the United States, for the Northern District of Illinois. The decision of the case reqnires an examination into the substantial *questions of law*—of maratime law presented upon the *facts* established in the case. The appellant does not alone ask a reversal of this decree upon any claimed weight of evidence in his favor, (though that claim can be made with great strength,) but upon the *facts* in the case considered beneath the most fundamental principles governing collision cases.

For the purpose of presenting those facts, it is necessary briefly to consider the allegations of the pleadings and the proofs in the cause.

THE PLEADINGS.

Allegations of the Libel.

The libel and amended libel allege that the schooner Flora Watson, (with which the Harriet Ross collided,) on the morning of November 3, 1862, was navigating Lake Ontario, with a cargo, &c., with good lookout, &c., with good light, &c.; that the wind was south and a good sailing breeze; that the schooner was steering east northeast; that when she was about three miles off the Niagara light, and about twelve miles from Canada, she was run foul of by the Harriet Ross, which struck the Flora Watson on the starboard side, and that thereby the Flora Watson was sunk. (Record, fols. 7 and 71.)

Allegations of the answer.

The answer alleges the collision to have occured on the morning of November 2, 1862, and on Lake Ontario; denies that the Flora Watson had good or sufficient lookout; denies that the Watson had a good light; alleges that the weather was hazy; admits that the wind was S. W., and a fair sailing breeze; denies all fault on the part of the Ross; alleges that the collision happened from want of a proper light and lookout on the Watson,

and from her neglect and carelessness; alleges that about four o'clock in the morning of November 2, 1862, the Ross, then being nearly opposite the light at the mouth of Niagara River, having her port tacks aboard, heading about west by north, with the wind southwest, and showing a good light, with two men on the lookout, (beside other proper officers and crew on deck,) made a bright light at a quarter past three, about one and a half points on the weather bow; that the Ross kept her course; that when the vessels were in such position as to make a collision imminent, the Ross put her helm hard down, (beyond question to lessen the force of the inevitable collision,) and the collision happened. (Fols. 14, 16.)

Result of the Pleadings.

The libel and answer agree in various particulars. The light of the Watson was a bright light, indicating of course that she had the wind free, was going large, and equally of course that upon her rested the duty of looking out for, *seeing and avoiding* approaching vessels.

St. John *vs.* Paine, 10 How., 557.

The pleadings agree in other particulars, but enough has been already indicated to show that the questions in the case presented upon the pleadings and upon proof of undoubted facts, must narrow into few and, and as the appellant claims, plain ones.

The case is of course to be considered (for the collision happened in 1862) under the law as it stood before the passage of the act of 1864, respecting the navigation and lights of vessels.

THE PROOFS; AND FIRST THE LIBELLANT'S PROOFS.

Evidence of Pennington, Mate of the Watson.

The mate swears (and for the sake of brevity in stating the evidence reference will not be made especially to the proofs of facts as to which both sides agree, or as to immaterial or incidental matters) that the Watson left the Welland Canal and entered Lake Ontario about a quarter past two of that morning, (fol. 19;) that the collision was before four. (Fol. 19.) After the Watson left the canal, several different courses before the collision were taken (fol. 19;) that the speed of the Watson was not far from seven knots an hour, (fol. 19;) that the Watson had her starboard tacks aboard, the sails on the port side, (fol. 19;) that the Watson had a good, bright "tip-top" light, and a lookout on the windlass end, (fol. 19;) that he was the officer of the Watson's deck, and *did not see the Ross until after she struck the Watson*, (fol. 20;) that he told the lookout to go to his post, and that *is why he knows he was there*—and it is evident that is all he does know—(fol. 20,) except that he says he saw him there *three quarters of an hour before the collision*, (fol. 20;) and as appears his vessel *did nothing to avoid the collision*. (Fol. 20.) That when he got aboard the Ross the Ross's light was "only a spark," (fol. 22;) that the light of the Ross was not seen before the collision by any one on the Watson, (fol. 22;) that they were "heaving up the anchor" on the Watson. (Fol. 23.)

Evidence of Folsom—before the mast.

Folsom swears he was helping get up the anchor; that he saw the Ross's light after the collision and it was very dim; that the Watson's crew were "*taken by surprise*" by the collision, (fol. 25;) that the Watson's crew had been at work at the anchors, coiling up halyards, and making sail after they left the canal and before the collision, all within a short time, (fol. 19;) that it had been starlight but was thick, (fol. 25;) but he could not recollect about the moonlight. (Fol. 25.)

Evidence of Van Patten.

The evidence of Patten, who was not on deck before the collision, tends to show that the Ross's light was not good as he saw it after the collision. (Fol. 27.)

Evidence of Boulanger, Lookout.

Boulanger swears, when the collision occurred he stood on the starboard side of the Watson on the windlass end, (fol. 28;) that he had been looking out about three quarters of an hour; that *he did not see the Ross approach until she struck*, (fol. 28;) that he did nothing else but look out for three quarters of an hour before collision, (fol. 28;) that when he got aboard the Ross he saw the light and it was bad, (fol. 28;) that he *was twenty-three years old*, (fol. 28;) that *this was the first trip*, (fol. 29;) *that he did not see the jib-boom of the Ross until it was right over his head*, (fol. 29;) that it was such a night that they could not see a vessel "*very plain but could see a light*," (fol. 29;) that he did no other work but lookout, and had nothing "on his mind" but to look out. (Fol. 29.)

PROOFS ON THE PART OF THE HARRIET ROSS.

Evidence of Robert Kerr, Second Mate of the Ross.

Kerr swears that the Ross had a good light; that she burned kerosene, which made a better light than camphene; that there was nothing to prevent an approaching vessel from seeing it, (fol. 37;) that the wind was southwest, and getting more westerly, (fol. 37;) that the Ross was heading about west half north, (fol. 38;) that the Watson was "*yawing about*," (fol. 38;) that the Ross kept her course without shifting, (fol. 38;) that just before the collision (and evidently when it was inevitable) the helm of the Ross was put down, (evidently to lessen the force of the blow, and under circumstances when no blame could be imputed to the Ross, (fols. 38, 39;) that the Ross was by the wind with the sheets hauled aft, (fol. 40;) that one of the men of the Watson said the Watson had no lookout, and that they were all forward with the anchors. (Fol. 40.)

Evidence of George Coulter, Seaman.

Coulter swears that after the light of the Watson was seen the Ross did not change her course, (fol. 49;) that the Watson was steering bad and yawing; that before the collision some time *the Watson was seen pointing across the bows of the Ross*, (of course the vessel and not her light alone was then seen, fol. 50;) that there was a lookout on the Ross on the fore-

castle deck forward, (fol. 50;) that the Ross had a green light, (fol. 51;) that the collision occurred in about five minutes after the Watson was seen, (not her light but the vessel,) as above stated, (fol. 52;) that the Ross kept her course, (fol. 52;) that the sails of the Watson were seen at the time when the mate went for the torch, (fol. 53.)

Evidence of John Mellon, Seaman.

Mellon swears that the Ross showed a green light, (fol. 56;) that the Ross kept her course, (fol. 57;) that the Watson yawed badly, (fol. 57;) that the Watson herself and her sails—not her light—was seen about 80 rods off, (fol. 57;) that the wheel of the Ross was just got down as the collision happened, (fol. 57;) that at the time the wheel was put down there was no chance of avoiding the collision, and if the wheel had not been put down the Watson would have struck the Ross in the centre, (fol. 58;) that the Ross's green light could have been seen if there had been any look out on the Watson, and that the Watson's men said there was no one on the look out, (fol. 58;) that if the helm of the Ross had not been put down, the Watson would have struck her, (fol. 59;) that the Ross had a good green light until the collision, when it was broken by the stay sail boom, (fol. 59.)

Evidence of John Waffle, Captain.

Captain Waffle swears that when he left the deck about an hour before the collision, the Ross's light was a bright good green light which could be seen two or three miles, (fol. 64;) that he saw the green light also when he came on deck, (fol. 65;) that the boy at the wheel of the Watson, was a *green young looking boy*, (fol. 65;) that one of the Watson's men said she had no look out, and the mate said they were forward at the anchors, (fol. 66;) that he never told the Captain of the Watson that the Ross's light was poor, (fol. 66,) and that *if there had been a proper look out on the Watson, they could have seen the hull and sails of the Ross half a mile distant.* (Fol. 67.)

POINT FIRST.

The Watson had the wind free; was going off large, and it was her duty to avoid the Ross. This is of course plain. (St. John *vs.* Paine, 10 Howard, 557.) The rule in such a case is undoubted, that "if two vessels are approaching each other on converging courses, one having the wind two points free and the other close hauled, and a collision occurs, *the burden is on the former to show that all possible care and skill were used on her part, and that the collision was the fault of the other vessel, or was inevitable.*"

The Clement, 2 Curtiss, 363.

POINT SECOND.

The Watson has not shown that all possible care and skill were used on her part, or that the collision was the fault of the Ross; or that it was inevitable. In fact the contrary appears from the evidence.

I. The Watson had not good look out, as it was her especial duty to do, she being a vessel going off large, and it being incumbent upon her to see and avoid other vessels.

1. The proof establishes this beyond question—even her own proof. The boy claimed to have been on the look out was young and *altogether inexperienced*, for he swears this was the *first trip*, meaning of course of himself, (fol. 29;) that he *did not see the Ross till she struck;* that he *did not see the jib-boom of the Ross until it was right over his head.* (Fol. 29.)

2. Can there be any doubt that had he been competent, and kept good look out, he would have seen the Ross's light (even if as dim as claimed by the Watson,) or that he would, at all events, have seen the Rossherself.

3. Even a dim light can be seen a long distance on such a night.

4. But even if there had been no light, the Ross herself could have been seen. It is a matter of common knowledge that a vessel without a light can, on such a night, be seen a long distance. The Watson herself—not her light—and her course, were seen from the Ross, long before the collision, (fol. 50,) was so seen about five minutes before the collision, (fol. 52,) and her sails could then be seen, (fol. 53,) and after this she was seen when she was about eighty rods off. (Folio 57.)

Certainly the Ross could have been seen as far; and as she was not seen, it is perfectly conclusive evidence that no good look out was kept.

5. And she was not seen. The pretended look out himself says he did not see the Ross till she struck, nor the jib-boom until it was right over his head. (Fols. 28, 29.) The mate, who was the officer of the Watson's deck, did not see the Ross till after she struck, (fols. 20, 22;) and Folsom, (on the Watson,) swears they were all taken entirely by surprise. (Fol. 25.)

6. Upon such facts alone, can it be doubted that there was no efficient and vigilant look out on the Watson?

7. But there is strong evidence (aside from the preponderance of proof as to the quality of the Ross's light) directly on this point. One of the Watson's men expressly states there was no look out, (fol. 40,) and there is other evidence of the same direct kind. (Fols. 65, 66.)

8. The proof beside is positive, *direct* and *uncontradicted*, that if there had been a proper look out on the Watson, the hull and sails of the Ross could have been seen half a mile, (fol. 67,) and as a matter of common knowledge this is beyond dispute.

9. Had the look out seen the Ross—not her light—as far as she could have been seen, can it be doubted that the Watson could have avoided the Ross? as it was her duty to see and avoid her; and as she did not, she must be liable for the collision.

II. As a matter of law, and upon familiar principles upon any such facts, it appears that there was no sufficient look out on the Watson—no such look out as the law requires on a sailing vessel.

Walbridge *vs.* Dill, 23 How., 448, 452, 453.
St. John *vs.* Paine, 10 How., 585.
The Genesee Chief, 12 How., 463.
The Northern Indiana, 3 Blatchford, C. C. R., 106.
Chamberlain *vs.* Ward, 21 How., 548, 570.

1. The first of the above cited cases establishes that the lookout on the Watson was not sufficient for a sailing vessel employed as the crew and officer of the deck of the Watson were in getting up the anchor, (fol. 23,) and making sail, (fol. 19,) and "yawing" and steering badly as the Watson was, (fols. 28, 49, 50, 57,) in the incompetent hands of the "green young looking boy" who was steering her, (fol. 65,) and whom the captain of the Watson evidently thought might have been asleep. (Fol. 65.)

The others precisely point out that such a lookout could not have been sufficient on a steamboat. The Watson going large as she was and bound, as to the Ross, a close hauled vessel, to keep out of her way, was under the familiar analogy of a vessel sailing thus to a steamer, bound to have the same lookout as a steamer. Certainly this was so when she was navigated and steered as she is shown to have been.

2. The burden being upon the Watson to show that this collision happened without her fault, she cannot do it, when she herself has thus been guilty of this important fault, this fault legally defined as such by undoubted authority.

III. The preponderance of proof is so strong that the Ross's light was good, (especially when it is as above established that the Watson had no lookout, and that her officers and crew were "taken by surprise," and literally saw nothing,) that it must be concluded as a matter of fact established by unquestionable proof, that the Ross's light was good, and if this is so, as it is undoubted the Ross kept her course down to the moment of collision, the Ross was without fault (for those were her entire duties) and the Watson is liable for the collision.

1. The light of the Ross is proven to have been good, if such a fact can be proven in a collision case. The mate swears the light was made by burning kerosene, which made a brighter light than camphene, and that it was good and there was nothing to prevent its being seen, (fol. 37.) Mellon swears the light was a good green light, and that *it was broken by the collision*, (fol. 59.) (See also fol. 44.)

The captain swears it was a bright good light, and could be seen two miles easily, (fol. 64.)

2. The foregoing proof is positive, and establishes the fact as a matter of law unless there be other proof to overcome it. There is none, for the Watson's men did not see the light before the collision. She had no sufficient lookout, and none of her men saw

anything of the light until after the collision, when the light was broken. Such proof in the absence of a sufficient lookout can have no effect upon the direct and positive proof upon the part of the Ross.

3. In considering this case, neither the District or Circuit Court gave weight to the most important fact, that *the Watson was without sufficient lookout*, did not give weight to it as *absolutely establishing the Watson in fault;* nor as bearing upon the preponderance of proof as to the quality of the Ross's light.

4. As the Ross was free from fault, and as the Watson has thus been shown to have been guilty of absolute fault, the fault which produced the collision, she is alone liable for the consequences, and the decrees must be reversed.

POINT THIRD.

It does not appear that the libellants were in any position to bring this action, or that the libellant, or any party in whose place the libellant may have been subrogated, sustained any damage by this collision, and without that proof it is entirely apparent the libellant cannot recover.

1. Certainly a party could not recover in this case unless he proved that he had been damaged by the collision.

2. There is no proof in the case tending to show any right of the libellants to recover except that found at folios 30 and 31. (There is the report of a Commissioner at folios 75, 76, which is of course not evidence, but it states no more than the testimony at folios 30, 31,) by which it appears that the libellant insured certain sums upon the hull, cargo, &c., of the Watson. *But no where in the case does it appear that the parties insured had any interest in the property, or that the libellant was made liable to pay the loss by the collision, or that there was any abandonment, or any payment of the loss before the filing of the libel.* With such defect of proof the libellant cannot recover.

3. Even if the insurance had been of a party having an insurable interest, the underwriter cannot recover upon any principle of subrogation or equitable assignment, without proof of abandonment or payment of the loss before the filing of the libel.

2 Phillips on Ins., §§ 1711, 1712.
Hart *vs.* Western R. R. Co., 13 Metcalf, 99.
Gardiner *vs.* Hart, 3 Denio, 232.
2 Hilliard on Torts, 670.

The reason is perfectly apparent. The insured has a right of action as well as the insurer. He should not be deprived of the right to prosecute *for his own benefit* until abandonment, or until he has been indemnified.

4. Of course a party not shown to have an interest in injured property, cannot maintain an action for its injury. Of course an insu-

rer—a party merely subrogated in his place, or his mere equitable assignee, must stand in the same position.

5. The libellant, therefore, simply appears as an insurer. If the libellant paid the amount of the insurance, it does not appear that it was liable to make that payment, or that the payment was other than a voluntary one. Of course, and upon familiar principles therefore, the libellant cannot claim either as an equitable assignee or as subrogated to any rights which can be enforced in this case. This is unquestionable upon authority.

Sanford *vs.* McLean, 3 Paige, 117.
Wilkes *vs.* Harper, 1 Comstock, (1 N. Y.,) 586.

Again the reason is equally apparent. It does not follow but that proceedings may be commenced by the actual owners of the property or their underwriters.

6. This point—this defect of proof—can of course be taken advantage of on appeal, which is a trial of the cause on the proof, and it is confidently claimed that as the libellant has not proven itself in position to sustain this libel, for this reason alone, were there none other, the decrees in the case must be reversed.

GEORGE B. HIBBARD, *for the Appellant,*
Buffalo, N. Y.